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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.

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 107

## Small Business Investment Companies

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a provision of Public Law 106–9, enacted April 5, 1999, under which certain types of consideration paid to a small business investment company (SBIC) by a small business are excluded from ''cost of money'' limitations.

**DATES:** This final rule is effective December 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Leonard W. Fagan, Investment Division, at (202) 205–7583.

**SUPPLEMENTARY INFORMATION:** On June 20, 2000, SBA published a proposed rule to implement a provision of Public Law 106–9, enacted April 5, 1999, that amended section 308(i)(2) of the Small Business Investment Act of 1958. See 65 FR 38223. This amendment provided that certain types of consideration paid to an SBIC by a small business are excluded from the regulatory limitations on ''Cost of Money'' established by the Small Business Administration (SBA). The amendment excluded from these Cost of Money limits any consideration consisting of ''contingent obligations'' granting the SBIC an interest in the ''equity or increased future revenue'' of the small business.

SBA received no comments on the proposed rule during the 30-day public comment period and is finalizing the proposed rule without change. The final rule contains the following provisions:

Revised § 107.855(g)(12) allows the exclusion of royalty payments for all SBIC financings. Previously, this exclusion applied only to ''LMI Investments'' as defined in § 107.50. To qualify for the exclusion, the royalty must be based on improvement in the performance of the small business after the date of the financing. The royalty could be expressed, for example, as a percentage of any increase in an underlying unit of measurement (*e.g.,* revenues or sales) after the date of the financing. The royalty can be based on an increase in more than one unit of measurement; for example, a royalty could provide for payment to the SBIC if either the revenue or the profits of the small business increased.

If an SBIC makes an investment through a holding company or an investment vehicle, as permitted under § 107.720(b), SBA will evaluate performance improvements by looking through the holding company or investment vehicle to the performance of the operating business itself.

Also with respect to royalty payments, the definition of a Debt Security in § 107.815(a) is revised to include a loan with a right to receive royalties that are excluded from the Cost of Money. As a result, a financing of this type will be subject to the lower Cost of Money ceiling applicable to Debt Securities, rather than the higher ceiling applicable to Loans with no upside potential.

This rule also adds § 107.855(g)(13), which excludes from Cost of Money any gains realized by an SBIC from the disposition of Equity Securities issued by a small business. This provision has been added as a clarification, since SBA's longstanding practice has been to exclude such gains from the Cost of Money limits. For example, if an SBIC receives warrants that qualify as Equity Securities, or converts debt to an Equity Security, any gains realized on the disposition of these interests do not count against the Cost of Money ceiling.

Finally, § 107.855(i) has been removed. This paragraph allowed an SBIC that was lending to a small business to receive a one-time ''bonus'' at the end of the loan term, contingent upon one or more factors reflecting the performance of the business during the loan period. Such bonus payments were excluded from the Cost of Money. The revision of § 107.855(g)(12), which provides a broader exclusion of contingent payments from the Cost of Money, renders the bonus provision redundant.

**Compliance With Executive Orders, 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).**

This final rule does not constitute a ''significant'' regulatory action within the meaning of section 3(f) of Executive Order 12866 and thus, was not reviewed by the Office of Management and Budget (OMB).

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of the final rule is to implement a provision of Public Law 106–9 allowing small business investment companies (SBICs) to realize contingent payments, such as royalties, from small businesses without being subject to regulatory limits on the amount of consideration received. Interest and other non-contingent payments made to SBICs by small businesses will continue to be subject to the existing Cost of Money regulations. This provision is expected to be attractive primarily to SBICs considering investments in small businesses that are seeking to grow, but whose owners do not want to give substantial equity interests to outside investors. In such cases, the SBIC can participate in the growth of the business by collecting a royalty rather than through an ownership interest.

Based on recent statistics for the SBIC program, the circumstances that this final rule addresses do not appear to apply to most small businesses currently receiving SBIC financing. In fiscal year 1999, SBICs provided financing to 1,983 different small businesses. In approximately two-thirds of all the financings closed during that year, the SBIC obtained an actual or potential equity interest in the small business; even if the proposed rule had been in place, it is unlikely that these transactions would have included royalty provisions. The remaining one-third of SBIC financings typically consist of loans to very small businesses with low growth potential, which are unlikely to have the ability to make royalty payments under any circumstances. Thus, it is unlikely that this final rule will affect a substantial number of small entities. The final rule is expected to expand financing

opportunities for certain small businesses wishing to grow while remaining closely held, rather than make SBIC financing more expensive for small businesses currently being served by the program.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

**List of Subjects in 13 CFR Part 107**

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA is amending 13 CFR part 107 as follows:

## PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.815, revise the first sentence of paragraph (a) to read as follows:

**§ 107.815 Financings in the form of Debt Securities.**

* * * * *

(a) *Definitions.* Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position, or a loan with a right to receive royalties that are excluded from the Cost of Money pursuant to § 107.855(g)(12).* * *

* * * * *

3. In § 107.855, revise paragraph (g)(12), add paragraph (g)(13) and remove paragraph (i) to read as follows:

**§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'').**

* * * * *

(g) * * *

(12) Royalty payments based on improvement in the performance of the Small Business after the date of the Financing.

(13) Gains realized on the disposition of Equity Securities issued by the Small Business.

* * * * *

Dated: November 3, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–29522 Filed 11–16–00; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; Health Care

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration is adopting new size standards for 19 Health Care industries and retaining the existing $5 million size standard for the remaining 11 Health Care industries. The North American Industry Classification System classifies Health Care industries under Subsector 621, Ambulatory Health Care Services; Subsector 622, Hospitals; and Subsector 623, Nursing and Residential Care Facilities. These revisions are made to more appropriately define the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs.

**DATES:** This final rule is effective on December 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:** On May 4, 1999, the Small Business Administration (SBA) proposed revisions to 11 size standards for the Health Care industries (64 FR 23798). At that time, SBA size standards were established for industries defined by the Standard Industrial Classification (SIC) System. Effective October 1, 2000, SBA established its size standards based on industries defined by the new North American Industry Classification System (NAICS), and no longer uses the SIC System (65 FR 30836, dated May 15, 2000). Accordingly, the changes to the Health Care size standards adopted in this final rule pertain to the NAICS industries.

The NAICS makes several noteworthy changes to the Health Care industries listed in the SIC System. First, the NAICS changes the terminology of the health related industries to ''Health Care'' from ''Health Services'' under the SIC System. Second, the NAICS establishes a Sector (equivalent to a Division in the SIC System) titled ''Health Care and Social Assistance.'' Health Services was a Major Group under the Services Division with 19 industries. The Health Care industries are grouped into three Subsectors (equivalent to a Major Group in the SIC System). Third, the number of Health Care industries increases to 30 NAICS industries from 19 Health Services SIC industries.

SBA has decided to adopt the proposed revisions of May 4, 1999 to the Health Care size standards. Most SIC Health Services industries correspond to a NAICS industry. However, there are some Health Services industries, or activities within an industry, that are combined with other SIC industries to form a new Health Care NAICS industry. In these cases, SBA has followed the guidelines it used to establish NAICS size standards. These guidelines are described in the proposed rule of October 22, 1999 (64 FR 57188) and the final rule of May 15, 2000 (65 FR 30836). In most cases, the NAICS size standard is the same as or higher than the size standard SBA had proposed for the SIC industry. Two activities in one Health Services industry, however, were reclassified into industries outside of the Health Care with a size standard lower than proposed for their SIC industries. The following table lists the proposed size standards by SIC industry and adopted size standards corresponding to the NAICS industries.

| SIC code | SIC industry | Proposed size standard (millions of dollars) | NAICS code | NAICS industry | Adopted size standard (millions of dollars) |
|---|---|---|---|---|---|
| 8011 | Offices and Clinics of Doctors of Medicine. | $7.5 | | | |
| | Surgical and Emergency Centers | | 621493 | Freestanding Ambulatory Surgical and Emergency Centers. | $7.5 |

| SIC code | SIC industry | Proposed size standard (millions of dollars) | NAICS code | NAICS industry | Adopted size standard (millions of dollars) |
|---|---|---|---|---|---|
| | HMO Medical Centers | | 621491 | HMO Medical Centers | 7.5 |
| | Offices of Physicians, Mental Health Specialists. | | 621112 | Offices of Physicians, Mental Health (part). | 7.5 |
| | Offices of Physicians Except Mental Health. | | 621111 | Offices of Physicians (except Mental Health Specialists) (part). | 7.5 |
| 8021 | Offices and Clinics of Dentists | 5.0 | 621210 | Offices of Dentists | 5.0 |
| 8031 | Offices and Clinics of Dentists | 5.0 | | | |
| | Offices of Doctors of Osteopathy, Except Mental Health. | | 621111 | Offices of Physicians (except Mental Health Specialists) (part). | 7.5 |
| | Offices of Doctors of Osteopathy, Mental Health. | | 621112 | Offices of Physicians, Mental Health Specialists (part). | 7.5 |
| 8041 | Offices and Clinics of Chiropractors | 5.0 | 621310 | Offices of Chiropractors | 5.0 |
| 8042 | Offices and Clinics of Optometrists | 5.0 | 621320 | Offices of Optometrists | 5.0 |
| 8043 | Offices and Clinics of Podiatrists | 5.0 | 621391 | Offices of Podiatrists | 5.0 |
| 8049 | Offices and Clinics of Health Practitioners, NEC. | 5.0 | | | |
| | Mental Health Practitioners, Except Physicians. | | 621330 | Offices of Mental Health Practitioners (except Physicians). | 5.0 |
| | Offices of Physical, Occupational, Recreational, and Speech Therapists and Audiologists. | | 621340 | Offices of Physical, Occupational, and Speech Therapists Audiologists Offices of All Other. | 5.0 |
| | Other Offices of Health Practitioners | | 621399 | Miscellaneous Health Practitioners | 5.0 |
| 8051 | Skilled Nursing Care Facilities | 10.0 | | | |
| | Continuing Care Retirement Communities. | | 623311 | Continuing Care Retirement Communities (part). | 10.0 |
| | All Other Skilled Nursing Care Facilities. | | 623110 | Nursing Care Facilities (part) | 10.0 |
| 8052 | Intermediate Care Facilities | 7.5 | | | |
| | Continuing Care Retirement Communities. | | 623311 | Continuing Care Retirement Communities (part). | 10.0 |
| | Mental Retardation Facilities | | 623210 | Residential Mental Retardation Facilities. | 7.5 |
| 8059 | Nursing and Personal Care Facilities, NEC. | 5.0 | | | |
| | Continuing Care Retirement Communities. | | 623311 | Continuing Care Retirement Communities (part). | 10.0 |
| | Other Nursing and Personal Care Facilities. | | 623110 | Nursing Care Facilities (part) | 10.0 |
| 8062 | General Medical and Surgical Hospitals. | 25.0 | 622110 | General Medical and Surgical Hospitals (part). | 25.0 |
| 8063 | Psychiatric Hospitals | 25.0 | 622210 | Psychiatric and Substance Abuse Hospitals (part). | 25.0 |
| 8069 | Specialty Hospitals Except Psychiatric. | 25.0 | | | |
| | Children's Hospitals | | 622110 | General Medical and Surgical Hospitals (part). | 25.0 |
| | Substance Abuse Hospitals | | 622210 | Psychiatric and Substance Abuse Hospitals (part). | 25.0 |
| | Other Specialty Hospitals | | 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals. | 25.0 |
| 8071 | Medical Laboratories | 10.0 | | | |
| | Diagnostic Imaging Centers | | 621512 | Diagnostic Imaging Centers | 10.0 |
| | Medical Laboratories, Except Diagnostic Imaging Centers. | | 621511 | Medical Laboratories | 10.0 |
| 8072 | Dental Laboratories | 5.0 | 339116 | Dental Laboratories | ([1]) |
| 8082 | Home Health Care Services | 10.0 | 621610 | Home Health Care Services | 10.0 |
| 8092 | Kidney Dialysis Centers | 25.0 | 621492 | Kidney Dialysis Centers | 25.0 |
| 8093 | Specialty Outpatient Facilities, NEC | 7.5 | | | |
| | Family Planning Centers | | 621410 | Family Planning Centers (part) | 7.5 |
| | Outpatient Mental Health Facilities | | 621420 | Outpatient Mental Health and Substance Abuse Centers. | 7.5 |
| | Other Specialty Outpatient Facilities | | 621498 | All Other Outpatient Care Centers | 7.5 |
| 8099 | Health and Allied Services, NEC | 7.5 | | | |
| | Blood and Organ Banks | | 621991 | Blood and Organ Banks | 7.5 |
| | Medical Artists | | 541430 | Graphic Design Services (part) | 5.0 |
| | Medical Photography | | 541922 | Commercial Photography (part) | 5.0 |
| | Childbirth Preparation Classes | | 621410 | Family Planning Centers (part) | 7.5 |
| | Other Health and Allied Services | | 621999 | All Other Miscellaneous Ambulatory Health Care Services. | 7.5 |

[1] 500 Employees.

As shown in the table, the adopted size standard for doctors of osteopathy is $7.5 million, although the proposed size standard for this industry was $5 million. Under the NAICS, SIC 8031 (Offices and Clinics of Doctors of Osteopathy) was combined into NAICS 621111 (Offices of Physicians) and NAICS 621112 (Office of Physicians, Mental Health Specialists). These two industries were substantially created from SIC 8011 (Offices and Clinics of Doctors of Medicine), where SBA proposed and is adopting $7.5 million. Consistent with SBA's guidelines in establishing NAICS size standards, the size standard for the SIC code that accounted for the greatest amount activity within the new NAICS is the size standard adopted for that NAICS code. The size of the offices and clinics of medical doctors industry is significantly larger than the offices and clinics of doctors of osteopathy industry.

A similar situation arose with SIC codes 8052 (Intermediate Care Facilities) and 8059 (Nursing and Personal Care Facilities, Not Elsewhere Classified). SBA proposed $7.5 million for SIC 8052 and $5 million for SIC 8059. However, most of SIC 8052 and all of SIC 8059 were combined with SIC 8051 (Skilled Nursing Care Facilities) to form two NAICS industries—NAICS 623311 (Continuing Care Retirement Communities) and 623110 (Nursing Care Facilities). SIC 8051 is much greater in size than both SIC 8052 and 8059 combined. Thus, the $10 million size standard proposed for SIC 8051 is adopted for both NAICS 623311 and 623110.

The size standard for Dental Laboratories changed to 500 employees effective October 1, 2000. This industry involves the manufacture of dentures, crowns and other dental appliances. Under the SIC system, the manufacture of dental appliances was classified as a manufacturing activity unless the dental appliances were produced on a custom or individual basis. The SIC system classified those latter activities within the Services Division under the Dental Laboratories industry (SIC 8072). NAICS now classifies all manufacturing of dental appliances as manufacturing, and placed the Dental Laboratories industry under the manufacturing sector—NAICS 339116. SBA's long standing policy has been to establish a size standard no lower than 500 employees for a manufacturing industry. This change was discussed and proposed in the October 22, 1999 proposed rule. SBA received no comments on this change and adopted the 500 employee size standard for NAICS 339116 in the May 15, 2000 final rule.

Two activities within SIC 8099, Health and Allied Services, Not Elsewhere Classified, were reclassified to industries in the Professional, Scientific, and Technical Services Sector with a size standard lower than proposed for SIC 8099. The activity of Medical Artists was combined with SIC 7336, Commercial Art and Graphic Design to form NAICS 541430, Graphic Design Services. The $5 million size standard for SIC 7336 was adopted for NAICS 541430 since it accounts for virtually all of the new NAICS industry.

The activity of Medical Photography was classified into NAICS 541922, Commercial Photography. That NAICS industry is the same as the SIC 7335 with the addition of Medical Photography. The $5 million size standard of SIC 7335 was adopted for NAICS 541922 since it accounts for virtually all the activities within the NAICS industry.

**Background**

SBA proposed changes to size standards based on its analysis of the latest available economic characteristics data on the Health Care industries from the U.S. Bureau of the Census (the Census Bureau) and Federal contract award data from the Federal Procurement Data Center. (At the time of the proposed rule, these data, and SBA's size standards, were based on the SIC system. To be consistent with the newly implemented NAICS size standards, the remainder of this rule will use the NAICS terminology to refer to industries affected by this rule. In a few cases, however, references are made to SIC industries to ensure the information discussed is accurate.) With regard to the economic characteristics data, SBA evaluated average firm size, distribution of industry receipts by size of firm, start-up costs, and industry competition of firms in the Health Care industries. SBA compared these characteristics to the average characteristics of all industries with a $5.0 million size standard (the most common size standard established for nonmanufacturing industries and referred to as the ''anchor'' size standard for the nonmanufacturing industries). Doing so enabled SBA to determine whether it should propose size standards for the Health Care industries that would be the same, higher, or lower than the $5 million anchor size standard.

In addition to the economic characteristics data, SBA reviewed the percent of total Federal contract dollars awarded to Health Care small businesses to determine if small businesses were obtaining a reasonable share of Federal contracts. For three industries covering Offices and Clinics of Medical Doctors, Specialty Outpatient Facilities, and Health and Allied Service—Not Elsewhere Classified (formally SIC codes 8011, 8093, and 8099, respectively), the proportion of Federal procurement was so much lower than that of firms at the anchor size that SBA proposed increasing those three size standards from the anchor size of $5 million to $7.5 million. For a further discussion of SBA's size standard methodology and analyses leading to the proposed size standards see the proposed rule of May 4, 1999 (64 FR 23798). What follows is a summary of the comments received and an explanation of the decision to adopt the proposed increases to the Health Care industries.

**Discussion of Comments on the Proposed Rule**

SBA received 17 timely comments on the proposed size standards. Two of these included comments by others in their organization. Of the 17 comments, two were from Federal agencies, one comment came from an industry association, and the remainder came from representatives of Health Care firms.

In summary, one commenter supported the proposed size standards without comment. One hospital association generally supported the proposed rule, but had several recommendations to modify it, which are discussed below. All of the others supported an increase in the size standards, but higher than the ones proposed by SBA.

The commenters raised eight major issues concerning the proposed size standards. Because of the comments, we reevaluated the data before adopting the proposed size standards. The issues are: (1) What are the true small business contracting opportunities in the Health Care industries; (2) do the proposed size standards provide for an appropriate increase to the existing size standards; (3) whether there should be a common size standard for all Health Care industries; (4) whether there should be an employee-based size standard; (5) whether we should establish a new industry code for Health Maintenance Organizations; (6) whether we should have the same size standard for doctors of medicine as for doctors of osteopathy; (7) whether Medicare and Medicaid distributions should be counted as Federal procurements; and (8) whether the receipts of affiliated health care services should be included in gross

income. Below we explain our response to each issue.

**What Are the True Small Business Contracting Opportunities in the Health Care Industries?**

The supporters of size standards higher than those proposed most often gave reasons relating to Federal contracting as the basis for a change. Commenters stated that firms at the proposed size standard are not large enough to compete successfully for the size and type of contracts offered in today's procurement environment. They stated that in recent years Federal contracts have grown progressively larger and more comprehensive. These contracts are generally multi-year and regional and often include services other than health care such as establishing, recruiting, and monitoring doctor or dentist practices. These commenters argued that size standards higher than those proposed are needed to recognize the size of small firms that can perform on these newer contracts.

Specifically, comments expressed a consistent and serious concern that the proposed size standard of $7.5 million for Offices and Clinics of Doctors of Medicine (SIC 8011), Intermediate Care Facilities (SIC 8052), Specialty and Outpatient Facilities (SIC 8093), and Health and Allied Services, NEC (SIC 8099) would preclude most firms from Federal procurement. They contended that the impact of keeping the size standards as low as proposed would be that few firms could qualify as small given the size of the health care contracts, and those that did, would quickly outgrow their small business status. Likewise, some Federal contracting officials expressed concern that the government would lose ''stellar performers'' who would no longer be considered small after receiving just two or three contracts.

In addition, several comments raised the issue that very few hospitals would qualify as small with the proposed $25 million size standard. They believed that if this size standard were adopted for hospitals, Federal agencies would be limited in their ability to support small business programs, such as the small business set-aside program.

Procuring agencies' comments opposing the ''low'' proposed size standards for hospitals also stated that they currently have problems meeting their commitment to include more small businesses because finding for-profit hospitals in some areas is difficult. If the for-profit hospitals (that is hospitals that qualify as businesses) are usually larger than the proposed $25 million size standard, agencies will not be able to set aside contracts for health care services.

SBA acknowledges that Federal agencies are issuing larger contracts than in the past. However, contract award data from the Federal Procurement Data System do not substantiate that large dollar contracts dominate Federal contracting to an extent that significantly limits small business opportunities. The vast majority of Federal contract awards are still within a size that small businesses should be capable of performing. Without verifiable data showing that large contracts adversely impact small business opportunities, these comments do not support establishing size standards to accommodate what appears to be a small proportion of overall contracting. Nonetheless, we are researching Federal procurement patterns and trends in greater detail to determine whether a separate size standard for Federal procurement of Health Care may be justified in the future.

**Do the Proposed Size Standards Provide for an Appropriate Increase to the Existing Size Standards?**

Most of the comments addressed the question of what size standard should be adopted for all of the Health Care industries. All of the comments agreed that the size standard should be increased, but most of the comments disagreed with the proposed size standards. Most of the comments supporting an increased size standard substantiated their comments with reasons related to Federal procurement. However, other reasons were also given for supporting higher size standards in the industry, such as the mergers and affiliations with Health Maintenance Organizations (HMOs) that were generally not a force in the health care industries just a decade ago.

Commenters also pointed out that an increased size standard is justified because the cost of entry into these industries has also increased over time, especially technology costs. These technology costs include costs for specialty diagnostic and treatment equipment such as computer-aided imaging. Commenters cited high start-up costs because of the specialty equipment and the high-paid staff needed to operate them as reasons for increasing size standards in the industries. They pointed out that not all doctors' offices are similar, some are ''high-risk'' specialties such as radiology, obstetrics and gynecology, and anesthesiology. These types of offices have high start-up and operating costs in addition to the physician and nursing compensation. Therefore, if all of the specialties have the same size standard, some offices within the same industry will be at a bigger disadvantage to remain within the ''small'' status.

SBA is not convinced, at this time, that an additional increase over the size standards proposed is justified. Many of the factors discussed above are reflected in the Census Bureau data that SBA uses to evaluate industry size standards. Later this year SBA will receive the 1997 Economic Census on the Health Care industries. If any significant differences are observed between the 1992 and 1997 data, SBA will consider a larger size standard where appropriate.

**Whether There Should Be a Common Size Standard for All Health Care Industries?**

A majority of the commenting firms and both Government agencies argued for a common size standard all Health Care industries. The most often mentioned size standard was $25 million. The basis for these comments was the merger, affiliation and HMO activity that has integrated the various industries more so than in the past. For example, hospitals have home health care businesses, HMOs link formerly independent private offices together into larger networks, and independents (that decide not to join an HMO) may merge or affiliate to continue to be viable in this new environment. These firms integrate the skills of each profession to offer quality services to their clients.

SBA agrees with the desirability of establishing the same size standard for industries in the same Subsector provided that industry-specific factors are reasonably consistent within that Subsector. However, neither the industry characteristic data nor the Federal procurement data supports one size standard for all Health Care industries. For example, we could find no justification in the economic characteristics data to continue the same size standard of $5 million for general medical and surgical hospitals and physician's offices. Accordingly, SBA does not believe that there should be a common size standard for all Health Care industries. Because the data support different levels, whichever one was selected would only fit some of the industries. Furthermore, based on the data, no case could be made to support that a $25 million size standard would be appropriate for all Health Care.

**Whether There Should Be an Employee-Based Size Standard?**

Two comments recommended that SBA adopt an employee-based size standard for all Health Care industries rather than a receipts-based size standard. The comments provided no supporting evidence showing why number of employees is a better measure of size than receipts. The Small Business Act requires us to use receipts as the basis for size standards in the service industries (Small Business Act (§ 3(a)(2)(C))). In addition, SBA's policy has been to use employee-based size standards for manufacturing, mining and wholesale, and receipts-based size standards for most non-manufacturing industries. Therefore, SBA will continue to use receipts as the basis for size standards in the Health Care industries.

**Whether We Should Establish a New Industry Code for HMOs?**

Some of the comments expressed the need for a new industry to cover the HMO industry. On October 1, 2000, SBA implemented size standards based on NAICS industries. The NAICS lists three codes for HMOs—(1) facilities actually providing health care listed as an ''HMO Medical Center'' (NAICS 621491), (2) health practitioners contracting to provide their services to subscribers of prepaid health plans within ''Offices of Physicians'' (NAICS 62111), and (3) organizations that underwrite and administer health and medical insurance policies, but which do not directly provide health care services as ''Direct Health and Medical Insurance Carriers'' (NAICS 524114).

Because HMOs have not previously been designated as a separate industry, the Census Bureau has not collected the same data for HMOs as it has collected for SIC industries. Now that the NAICS has identified specific industries for HMOs, the 1997 Economic Census will have data on HMOs. We expect to have that data later this year and will review the HMO size standards at that time.

**Whether We Whould Have the Same Size Standard for Doctors of Medicine as for Doctors of Osteopathy?**

In response to SBA's review of the Health Care size standards and to our proposal to increase the size standards for doctors of medicine, we received comments recommending that doctors of medicine and doctors of osteopathy have the same size standards. The commenters stated that both health care providers basically meet the same educational requirements and perform the same services. The proposed rule included doctors of osteopathy in the group of health care services remaining at the $5 million while the size standard for doctors of medicine was proposed to be $7.5 million.

Based on the comments, we agree that the same standard should be adopted for doctors of osteopathy and doctors of medicine recognizing that the two professions should be considered as one for most purposes. Furthermore, NAICS recognizes that these two types of practitioners should be considered the same and combined doctors of osteopathy and doctors of medicine into a new industry titled ''Offices of Physicians'' (NAICS code 62111). As previously discussed, $7.5 million is being adopted for this industry and results in the same size standard being applicable to doctors of medicine and doctors of osteopathy.

**Whether Medicare and Medicaid Distributions Should Be Counted as Federal Procurements?**

Although we specifically requested comments on this issue in the proposed rule, we received only one comment. A hospital association representing nearly 5,000 hospitals took a strong stand against this approach. It contended that the payments are to and for health care beneficiaries, not the health care provider. As such, these payments are not discretionary but mandatory payments for services obtained by beneficiaries. In addition, it stated that health care services are purchased by beneficiaries based on consumer preference in a competitive environment. SBA agrees and does not believe the distribution of Medicare and Medicaid funds should influence the establishment of size standards.

**Whether the Receipts of Affiliated Health Care Services Should Be Included in Gross Income?**

The Health Care industries are continuing to evolve. Since the advent of managed care changed the Health Care landscape, other networks and alliances have emerged to respond to this new environment. Many hospitals own or control home health services, physician clinics, medical laboratories or dialysis centers. SBA's regulations require that the income of all affiliates be included when calculating average annual receipts. We received one comment on this subject. A hospital association recommended that income from such hospital affiliates not be taken in consideration when calculating either the average annual receipts of the hospital or the home health services, physician clinics, medical laboratories or dialysis centers so that hospital affiliates could qualify as small businesses.

Affiliation is a key concept in determining which businesses are small. One of the criteria for being a small business under the Small Business Act (§ 3(a)) is that it be independently owned and operated. Businesses owned or controlled by other concerns have access (actual or potential) to resources not available to other similar businesses. The Census Bureau data we use to evaluate size standards captures affiliation through ownership among businesses. Other new relationships in terms of networks and alliances may have to be looked at on a case-by-case basis. We believe our current affiliation regulations are adequate to distinguish relationships that lead to control, and, thus, when we should consider businesses affiliated (see 13 CFR 121.103).

**Why We Are Adopting These Size Standards?**

Comments to the proposed rule generally argued for higher size standards because of trends in Federal procurement. They also argued that the proposed size standards were not high enough to effectively help small businesses obtain additional Federal contracting opportunities. They recommended that we adopt a much higher size standard, such as $25 million, but did not identify supporting data.

In view of these comments, SBA had three viable options; (1) adopt the proposed standards, (2) revise the size standards upward based on comments without supporting data, or (3) suspend action on the size standards and wait for more current data.

SBA decided to go with option one—adopt the size standards as proposed. SBA does not believe that the reasons given by the comments for a $25 million size standard, in the absence of supporting data, are sufficient to support that level. SBA cannot follow larger and larger Federal contracts with increasing size standards when industry characteristics do not otherwise support the action. Also, size standards are used for purposes other than Federal procurement, such as regulatory flexibility analyses and SBA financial assistance programs. Thus, we need to ensure that size standards are viable for a variety of uses.

Because most of the comments expressed concerns in the Federal procurement area, we recognize that we need to consider establishing a size standard just for the purpose of Federal procurement of Health Care. Our preliminary work on this approach

shows that more research is needed to determine if size standards larger than adopted by this final rule are supportable and how to best describe Federal procurements for Health Care. If we believe a different standard(s) is justified, a new proposed rule will be issued. Meanwhile, firms in these industries will benefit from the increase made in this final rule. SBA chose not to suspend action on the proposed size standards until we have more current data because the proposed higher size standards will make more opportunities available for small businesses than retaining the current size standards and all of the commenters supported higher size standards for the Health Care industries.

**Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866.

This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what are the significant issues raised by the commenters in response to the initial regulatory flexibility analysis (IRFA), (3) what is SBA's assessment of those IFRA issues, (4) what changes if any are made from the proposed rule as a result of the comments on IFRA, (5) what is SBA's description and estimate of the number of small entities to which the rule will apply, (6) what is the projected reporting, record keeping, and other compliance requirements of the rule, and an estimate of the classes of small entities which will be subject to the requirements, (7) what type of type of professional skills are necessary to prepare the required reports or records, (8) what are the steps SBA has taken to minimize the economic impact on small entities, (9) what are the legal policies or factual reasons for selecting the alternative adopted in the final rule, and (10) what alternatives did SBA reject.

*(1) What Is the Need for and Objective of the Rule?*

These revisions are made to more appropriately define the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs.

*(2) What Are the Significant Issues Raised by the Commenters in Response to the IRFA?*

The comments raised eight major issues concerning the proposed size standards, but none of the comments addressed the IRFA in the proposed rule.

*(3) What Is SBA's Assessment of Those IFRA Issues?*

No issues were raised in response to the IFRA, so SBA had no issues to assess.

*(4) What Changes if any Are Made From the Proposed Rule as a Result of the Comments on IFRA?*

None, since no comments were received on the proposed rule concerning the IRFA.

*(5) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?*

SBA estimates that 4,700 additional firms will be considered small as a result of this final rule. These firms will be eligible to seek available SBA assistance provided that they meet other program requirements. Of the additional firms gaining eligibility, more than half would be Offices and Clinics of Doctors of Medicine, and Skilled Nursing Care Facilities. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate more than $50 billion in annual sales; total sales in all twelve industries receiving a size standards increase are $544 billion.

*(6) What Is the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the classes of small entities Which Will Be Subject to the Requirements?*

The new size standards are not expected to impose any additional reporting, record keeping or compliance requirements on small entities because a change in size standards does not affect their business operations. Increasing size standards provides more access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

*(7) What Type of Professional Skills Are Necessary to Prepare the Required Reports or Records?*

No reports or records are required as a result of changing the size standards.

*(8) What Are the Steps SBA Has Taken to Minimize the Economic Impact on Small Entities?*

Most of the economic impact on small entities will be positive. The most significant benefits to businesses that would obtain small business status as a result of adoption of this final rule are: (1) Eligibility for the Federal Government's procurement preference programs for small businesses 8(a) firms, small disadvantaged businesses and small businesses located in Historically Underutilized Business Zones) and (2) the eligibility for SBA's financial assistance programs such as 7(a) and 504 business loans. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $325 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents 7.4 percent of the $4.4 billion the Federal government awarded in these nineteen Health Care industries during fiscal year 1999. Under SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimated that less than $4 million in new loans could be made to these newly defined small businesses. During fiscal year 1999, $600 million in loans were guaranteed by SBA under these two financial programs for firms in the Health Care industries. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. (For example, more than 95% of the 1999 loans were made to firms with less than $3.5 million in receipts.) Thus, increasing the size standard would likely result in only a small increase in small business guaranteed loans to businesses in these Health Care industries.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. The change to size standards is not anticipated to have any appreciable affect on any of these factors. Firms affected by this rule-making would be eligible to seek available SBA assistance provided that they meet other program requirements. However, small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger newly defined small businesses. On the other hand, with

more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contracting opportunities available under these programs.

*(9) What Were the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?*

As stated in 15 U.S.C. 632(a)(3) and 13 CFR 121.102, SBA is to consider the differences in industries when establishing size standards. SBA is not convinced, at this time, that an additional increase over the size standards proposed is justified. Many of the factors discussed in the comments are reflected in the Census Bureau data that SBA uses to evaluate industry size standards, so they are already included in our analysis published in the proposed rule. Later this year SBA will receive the 1997 Economic Census on the Health Care industries. If any significant differences are observed between the 1992 and 1997 data, SBA will consider new size standards where appropriate. Nonetheless, we are researching Federal procurement patterns and trends in greater detail and will evaluate the 1997 Economic Survey data to determine whether an increased size standard for Federal procurement of Health Care is justified.

*(10) What Alternatives Did SBA Reject?*

SBA acknowledges that Federal agencies are issuing larger contracts than in the past. However, contract award data from the Federal Procurement Data System do not substantiate that large dollar contracts dominate Federal contracting to an extent that significantly limits small business opportunities. The vast majority of Federal contract awards are still within a size that small businesses should be capable of performing. Without verifiable data showing that large contracts adversely impact small business opportunities, these comments do not support establishing size standards to accommodate what appears to be a small proportion of overall contracting.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of the order.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule does not impose new reporting or recordkeeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative procedure and practice, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reason stated in the preamble, SBA is amending 13 CFR Part 121 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of Part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, amend the table ''SIZE STANDRDS BY NAICS INDUSTRY,'' under the heading SECTOR 62—Health Care and Social Assistance, revise the entries Subsector 621—Ambulatory Health Care Services, Subsector 622—Hospitals, and Subsector 623—Nursing and Residential Care Facilities, to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification codes?**

* * * * *

SIZE STANDARD BY NAICS INDUSTRY

| NAICS codes | Description (N.E.C.=Not elsewhere classified) | Size standards in number of employees or millions of dollars |
|---|---|---|
| * | * * * * * * | |
| | **Sector 62—Health Care and Social Assistance** | |
| * | * * * * * * | |
| | **Subsector 621—Ambulatory Health Care Services** | |
| 621111 | Offices of Physicians (except Mental Health Specialists) | $7.5 |
| 621112 | Offices of Physicians, Mental Health Specialists | $7.5 |
| 621210 | Offices of Dentists | $5.0 |
| 621310 | Offices of Chiropractors | $5.0 |
| 621320 | Offices of Optometrists | $5.0 |
| 621330 | Offices of Mental Health Practitioners (except Physicians) | $5.0 |
| 621340 | Offices of Physical, Occupational and Speech Therapists and Audiologists | $5.0 |
| 621391 | Offices of Podiatrists | $5.0 |
| 621399 | Offices of All Other Miscellaneous Health Practitioners | $5.0 |
| 621410 | Family Planning Centers | $7.5 |
| 621420 | Outpatient Mental Health and Substance Abuse Centers | $7.5 |
| 621491 | HMO Medical Centers | $7.5 |
| 621492 | Kidney Dialysis Centers | $25.0 |
| 621493 | Freestanding Ambulatory Surgical and Emergency Centers | $7.5 |
| 621498 | All Other Outpatient Care Centers | $7.5 |
| 621511 | Medical Laboratories | $10.0 |
| 621512 | Diagnostic Imaging Centers | $10.0 |
| 621610 | Home Health Care Services | $10.0 |

SIZE STANDARD BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C.=Not elsewhere classified) | Size standards in number of employees or millions of dollars |
|---|---|---|
| 621910 | Ambulance Services | $5.0 |
| 621991 | Blood and Organ Banks | $7.5 |
| 621999 | All Other Miscellaneous Ambulatory Health Care Services | $7.5 |
| | **Subsector 622—Hospitals** | |
| 622110 | General Medical and Surgical Hospitals | $25.0 |
| 622210 | Psychiatric and Substance Abuse Hospitals | $25.0 |
| 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals | $5.0 |
| | **Subsector 623—Nursing and Residential Care Facilities** | |
| 623110 | Nursing Care Facilities | $10.0 |
| 623210 | Residential Mental Retardation Facilities | $7.5 |
| 623220 | Residential Mental Health and Substance Abuse Facilities | $5.0 |
| 623311 | Continuing Care Retirement Communities | $10.0 |
| 623312 | Homes for the Elderly | $5.0 |
| 623990 | Other Residential Care Facilities | $5.0 |

* * * * * * *

Dated: November 9, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–29523 Filed 11–16–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–364–AD; Amendment 39–11985; AD 2000–23–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. This action requires a one-time inspection, and corrective action if necessary, to ensure the proper installation of the tie rod through the dust shield and both jackscrew assemblies on the horizontal stabilizer trim actuator. This action is necessary to prevent jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective December 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 18, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–364–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. The CAAI advises that the horizontal stabilizer trim actuator can jam or disconnect due to incorrect installation, maintenance, or inspection. The CAAI reports one case of incorrect installation of the trim actuator tie rod and dust shield, which may have caused an accident. Jamming or disconnection of the actuator, if not corrected, could result in reduced pitch control of the airplane.

### Explanation of Relevant Service Information

Israel Aircraft Industries, Ltd., has issued the following alert service bulletins:

| Service bulletin | Date | Model |
|---|---|---|
| 1121 Commodore Jet Alert Service Bulletin 1121–27A–028 | August 28, 2000 | 1121 JET COMMANDER. |
| 1123 Westwind Alert Service Bulletin 1123–27A–053 | August 28, 2000 | 1123 WESTWIND. |
| 1124 Westwind Alert Service Bulletin 1124–27A–147 | August 28, 2000 | 1124 and 1124A WESTWIND. |

These alert service bulletins describe procedures for a one-time visual inspection to determine whether the tie rod is installed correctly through the dust shield and both jackscrew assemblies on the horizontal stabilizer trim actuator. The inspection includes measuring the distance between the bottom of the dust shield and the housing of the horizontal stabilizer actuator. The CAAI classified these service bulletins as mandatory and issued Israeli airworthiness directive 27–00–09–01, dated September 24, 2000, to ensure the continued airworthiness of these airplanes in Israel.

**FAA's Conclusions**

These airplane models are manufactured in Israel 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 CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, 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.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

**Difference Between AD and Relevant Service Information**

Operators should note that, although the alert service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the CAAI. In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the CAAI would be acceptable for compliance with this AD.

**Determination of Rule's Effective Date**

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

**Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–NM–364–AD.''

The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2000–23–13 Israel Aircraft Industries, LTD.:** Amendment 39–11985. Docket 2000–NM–364–AD.

*Applicability:* All Model 1121, 1121A, 1121B, 1123, 1124, and 1124A 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 jamming or disconnection of the horizontal stabilizer trim actuator, which could result in reduced pitch control of the airplane, accomplish the following:

**Inspection**

(a) Within 25 flight hours after the effective date of this AD: Perform a detailed visual inspection to determine whether the tie rod is installed correctly through the dust shield and both jackscrew assemblies of the horizontal stabilizer trim actuator. Do the inspection per Israel Aircraft Industries Alert Service Bulletins 1121–27A–028 (for 1121 JET COMMANDER series airplanes), 1123–27A–053 (for 1123 WESTWIND series airplanes), or 1124–27A–147 (for 1124 and 1124A WESTWIND series airplanes); all dated August 28, 2000; as applicable.

**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) If both the tie rod and the dust shield are correctly assembled: No further action is required by this AD.

(2) If either the tie rod or the dust shield is not correctly assembled: Prior to further flight, accomplish the actions specified by either paragraph (a)(2)(i) or (a)(2)(ii).

(i) Replace the horizontal stabilizer trim actuator with a serviceable part in accordance with the airplane maintenance manual. Or

(ii) Repair the horizontal stabilizer trim actuator in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (CAAI) (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.

**Spares**

(b) As of the effective date of this AD, no person shall install a horizontal stabilizer trim actuator on any airplane, unless the actuator has been inspected and all applicable corrective actions have been performed in accordance with the requirements of this AD.

**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. 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 3:** 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) Except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD: The actions shall be done in accordance with the following alert service bulletins:

| Service bulletin | Date |
|---|---|
| 1121 Commodore Jet Alert Service Bulletin 1121–27A–028 | August 28, 2000. |
| 1123 Westwind Alert Service Bulletin 1123–27A–053 | August 28, 2000. |
| 1124 Westwind Alert Service Bulletin 1124–27A–147 | August 28, 2000. |

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 Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. 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 4:** The subject of this AD is addressed in Israeli airworthiness directive 27–00–09–01, dated September 24, 2000.

**Effective Date**

(f) This amendment becomes effective on December 4, 2000.

Issued in Renton, Washington, on November 7, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–29078 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–259–AD; Amendment 39–11989; AD 98–09–16 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; rescission.

**SUMMARY:** This amendment rescinds an existing Airworthiness Directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes.

That AD currently requires revising the Airplane Flight Manual to add specific flightcrew instructions to be followed in the event of failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight. The requirements of that AD were intended to prevent failure of the second of two direct current generators after the failure of the first generator. Since the issuance of that AD, the FAA has received further information indicating that the incident that prompted that AD was an isolated case.

**DATES:** Effective November 17, 2000.

**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 Aerospatiale Model ATR–42 and ATR–72 series airplanes was published in the **Federal Register** on November 9, 1999 (64 FR 61044). That action proposed to rescind AD 98–09–16. Rescission of AD 98–09–16 constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

### 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

After careful review of the available data, the FAA has determined that air safety and the public interest require the rescission of the rule as proposed.

### Cost Impact

The FAA estimates that 145 airplanes of U.S. registry are affected by AD 98–09–16. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is approximately $8,700, or $60 per airplane. However, the adoption of this rescission will eliminate those costs.

Removal of the AFM revision required by AD 98–09–16 will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removal of the AFM revision is estimated to be $8,700, or $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 in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Rescission

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 an AD which removes amendment 39–10497, to read as follows:

**98–09–16 R1 AEROSPATIALE:** Amendment 39–11989. Docket No. 98–NM–259–AD. Rescinds AD 98–09–16, Amendment 39–10497.

*Applicability:* All Model ATR–42 and ATR–72 series airplanes; certificated in any category.

**Effective Date**

This rescission is effective November 17, 2000.

Issued in Renton, Washington, on November 9, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–29378 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

## Schedule II Control of Dihydroetorphine Under the Controlled Substances Act (CSA)

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Final rule.

**SUMMARY:** This is a final rule issued by the DEA that dihydroetorphine (7,8-dihydro-7α-[1-(R)-hydroxy-1-methylbutyl]-6,14-endo-ethanotetrahydrooripavine) is a Schedule II controlled substance. Although dihydroetorphine is not specifically listed in Schedule II of the Controlled Substances Act (CSA), it is a derivative of thebaine and as such is controlled under 21 U.S.C. 812 Schedule II(a)(1) which includes ''Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.'' Dihydroetorphine is a derivative of thebaine, a natural constituent of opium, hence dihydroetorphine is, by virtue of 21 U.S.C. 812 and 21 CFR Part 1308.12(b)(1)(16), a Schedule II controlled substance. International control of dihydroetorphine in Schedule I of the Single Convention on Narcotic Drugs, 1961 in 1998 prompted the DEA to specifically list dihydroetorphine as a controlled substance in Schedule II of the CSA.

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION OR QUOTA REQUESTS CONTACT:** Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

**SUPPLEMENTARY INFORMATION:**

### What Is Dihydroetorphine and Why Is It Controlled?

Dihydroetorphine is the international non-proprietary name for a chemical substance which is chemically similar to etorphine. It is an opiate-like

substance that is 3–4 order of magnitude (1000 to 10,000 times) more potent than morphine but with a shorter duration of action. The effects of dihydroetorphine and its psychological dependence liability are similar to those produced by heroin. Animal studies demonstrate that it is a highly potent analgesic with effects that begin within 15 minutes of administration and the effects last from 60–90 minutes. Dihydroetorphine was registered in China in December of 1992 for the relief of acute severe pain. However, abuse of dihydroetorphine began soon after it was marketed in China in 1992. Dihydroetorphine is not marketed or used medically in the United States. As a thebaine derivative, dihydroetorphine is controlled in Schedule II of the CSA in the United States.

**Under What Authority Is Dihydroetorphine Controlled?**

This order is prompted by a letter dated November 11, 1998, in which the United States Government was informed by the Secretary-General of the United Nations that dihydroetorphine has been added to Schedule I of the Single Convention on Narcotic Drugs, 1961 (1961 Convention). As a signatory Member State to the 1961 Convention, the United States is obligated to control dihydroetorphine under national drug control legislation, *i.e.*, the CSA. Dihydroetorphine is currently controlled under Schedule II of the CSA as a thebaine derivative, and as such, all regulations and criminal sanctions applicable to Schedule II substances have been and are applicable to dihydroetorphine. Schedule II control under the CSA satisfies the requirements of Schedule II control under the 1961 Convention.

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is not a significant regulatory action under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 12988—Civil Justice Reform**

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

**Regulatory Flexibility Act**

This action will not have a significant economic impact on a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action provides notification of control of dihydroetorphine in Schedule II of the CSA in order to comply with international treaty obligations. Although dihydroetorphine was not specifically listed in the CSA as a controlled substance, it was already controlled in Schedule II of the CSA as a derivative of thebaine.

**Unfunded Mandate Reform Act**

This rule will not result in the expenditure of state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 13132 Federalism**

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. Therefore, in accordance with E.O. 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Plain English**

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation please contact Patricia M. Good, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, phone (202) 307–7297.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(d)(1) of the CSA [21 U.S.C. 811(d)(1)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

## PART 1308—[AMENDED]

1. The authority citation for Part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.12 is amended by redesignating paragraphs (b)(1)(8) through (b)(1)(16) as (b)(1)(9) through (b)(1)(17) and adding a new paragraph (b)(1)(8) to read as follows:

**§ 1308.12 Schedule II.**

* * * * *

(b) * * *

(1) * * *

(8) dihydroetorphine—9334

* * * * *

Dated: November 7, 2000.

**Julio F. Mercado,**

*Deputy Administrator.*

[FR Doc. 00–29439 Filed 11–16–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–00–244]**

## Drawbridge Operation Regulations: Raritan River, Arthur Kill, and Their Tributaries, NJ

**AGENCY:** Coast Guard, DOT.

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

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Perth Amboy railroad bridge, at mile 0.5, across the Raritan River in New Jersey. This deviation from the regulations allows the owner of the bridge to keep the bridge in the closed position from 10:30 a.m. on November 28, 2000 through 11 a.m. on November 30, 2000. This action is necessary to facilitate the inspection of the bridge wedge mechanism system at the bridge.

**DATES:** This deviation is effective from November 28, 2000, through November 30, 2000.

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

**SUPPLEMENTARY INFORMATION:** The Perth Amboy railroad bridge, at mile 0.5, across the Raritan River has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.747.

The bridge owner, New Jersey Transit (NJTRANSIT), requested a temporary deviation from the drawbridge operating regulations to facilitate the inspection of the bridge wedge mechanism system at the bridge. This deviation to the operating regulations allows NJTRANSIT to keep the Perth Amboy Bridge in the closed position from 10:30 a.m. on November 28, 2000 through 11 a.m. on November 30, 2000.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the inspection/repairs are necessary in order to keep the bridge operating and prevent an unscheduled closure due to component failure.

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

Dated: November 7, 2000.

**Gerald M. Davis,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 00–29516 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD1–00–240]**

**RIN 2115–AA97**

## Safety Zone: Andrew McArdle (Meridian Street) Bridge, Chelsea River, Chelsea, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Chelsea River for the Andrew McArdle Bridge repairs in all waters 100 yards upstream and 100 yards downstream from the bridge location. The safety zone temporarily requires a four-hour advance notification by vessels wishing to transit through the zone. The safety zone is needed to protect vessels from the hazards posed during repairs to the bascule floor beams and bridge fender system. It is also needed to allow sufficient time to move the construction barges in and out of the channel for vessel transits during the repair period.

**DATES:** This rule is effective from Wednesday, October 18, 2000, through Friday, December 8, 2000.

**ADDRESSES:** Documents as indicated in this preamble are part of docket CGD1–00–240 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) David Sherry, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

Pursuant to 5 U.S.C 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until October 12, 2000, making it impossible to publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to regulate a portion of the Chelsea River and protect the maritime public from the hazards associated with bridge repair activities. Additionally, the repair activity takes place only on weekdays from 6:30 a.m. until 5 p.m. and does not close the channel to users.

### Background and Purpose

The Andrew McArdle Bridge over the Chelsea River, Chelsea, MA, fender system and bascule floor beams require repairs. During the repair evolution, barges will be moored in the center of the channel. Barge placement requires a four-hour advance notice by vessels wishing to transit the area, to ensure vessel safety.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Andrew McArdle Bridge. This safety zone prohibits entry into or movement within this portion of the Chelsea River without a four hour advance notice given to personnel on scene. In an effort to maximize commerce during the closures, waterway users were invited to provide input at meetings on the following dates: August 11, 17, 24, and 31, September 7, 14, 21, and 28, and October 5, 2000. The meetings, hosted by Marine Safety Office Boston, were attended by stakeholders and promoted a consensus of the most favorable requirements for bridge repair efforts during the effective period.

The repair work requires a four hour advance notice for passage to minimize lost work time due to setting up, cleaning the site, and assuring safety for ship traffic. The Coast Guard was able to balance this need with community demands through the aforementioned open forum. The group arrived at a consensus between marine operators, the bridge owner, Massachusetts State Highway officials, and construction contractor. The expected duration of the safety zone will be from Wednesday, October 18, 2000 through Friday, December 8, 2000. During the effective dates, the channel will be open with construction on going, but a four-hour notice is required for vessel passage. Notice shall be given to the Andrew McCardle Bridge bridge tender via VHF channel 13. The bridge tender will convey the notice of passage to the construction barge operator. Smaller vessels that can navigate the area without requiring the barges to move are not required to give this notice. The Coast Guard will make Marine Safety Information Broadcasts and Local Notice to Mariners announcements informing mariners of this safety zone.

### Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited duration of the safety zone and limited commercial traffic expected in the area during the effective periods. Moreover,

commercial operators will receive advance channel closure notification through Port Operators Group meetings, Safety Marine Information Broadcasts and industry dissemination. The early notification will permit mariners ample time to alter voyage plans.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River between October 9, 2000 through December 8, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will issue maritime advisories before the effective period that will be widely available to users of the river; and the closures are based on waterway user input.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard coordinated meetings on August 11, 17, 24, and 31; September 7, 14, 21, and 28, and October 5, 2000, involving Chelsea River users to gain input and feedback on the construction. The group organized and agreed upon the schedule provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have federalism implications under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T00–240 to read as follows:

### § 165.T00–240 Safety Zone: Andrew McArdle Bridge, Chelsea River, Chelsea, MA.

(a) *Location.* The following area is a safety zone:

All waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Andrew McArdle Bridge.

(b) *Effective Dates.* This section is effective Wednesday, October 18, 2000 through Friday, December 8, 2000.

(c) *Regulations.*

(1) The channel will be open with construction on going with a four-hour notice to the Andrew McCardle Bridge bridge tender on VHF channel 13 required for vessel passage.

(2) Entry into or movement within this zone is prohibited without four-hour notification to the Andrew McCardle Bridge bridge tender, unless authorized by the Captain of the Port Boston.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The general regulations covering safety zones in section 165.23 of this part apply.

Dated: October 18, 2000.

**J.R. Whitehead,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 00–29517 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Part 1**

**RIN 0651–AB19**

## Treatment of Unlocatable Patent Application and Patent Files

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office is amending the rules of practice to provide for the replacement of patent application and patent files that cannot be located after a reasonable search. This change is designed to expedite the process of application and patent file reconstruction to minimize the processing or examination delays resulting when the Office cannot locate an application or patent file after a reasonable search.

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

**SUPPLEMENTARY INFORMATION:** Over 330,000 patent applications (provisional and nonprovisional) were filed in the United States Patent and Trademark Office (Office) in fiscal year 1999. On occasion, an application or patent file cannot be located.

When a patent application or patent file cannot be located after a reasonable search and the application or patent file is necessary to conduct business before the Office, the Office will ''reconstruct'' the application or patent file. This involves placing a duplicate copy of the original application papers and all of the correspondence between the Office and applicant or patentee in a new file wrapper. The Office currently (since the spring of 1997) uses its Patent Application Capture and Review (PACR) system to image scan the application papers submitted on the filing date of the application (except for any appendix or information disclosure statement) and to create an electronic database (PACR database) containing a duplicate record of the original application papers (application papers were microfilmed prior to the spring of 1997). Thus, the Office can obtain a copy of the original application papers from its PACR database (or microfilm records).

The Office, however, does not possess a duplicate copy of subsequent correspondence from the applicant or patentee (*e.g.,* applicant replies or other papers) concerning the application or patent. While the Office may have a copy of some Office correspondence (Office actions saved on a disc or computer hard drive), the Office often does not possess a complete copy of the Office correspondence concerning the application or patent (*e.g.,* paper-based forms or notices). Thus, to reconstruct a file accurately, the Office must request that the applicant or patentee either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy.

Formerly, the request that applicant provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant did not require a reply within any set time period. In a pending application, this added to the delay in processing and examination resulting from the inability to locate the application file. To expedite the process of reconstructing the file of an application or patent file, the Office is amending the rules of practice to provide that the Office will now set a time period within which applicant or patentee must either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy. Since the Office cannot continue to examine an application for which it does not have a complete copy, the failure to provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant in a pending application within this time period will result in abandonment of the application. *See* 35 U.S.C. 133 (failure to prosecute an application in a timely manner ''after any action therein'' shall be regarded as abandonment of the application).

Corresponding with an applicant or patentee when an application is abandoned or patented is often difficult because address information is often not current. There are many good reasons for keeping correspondence information current in an abandoned application or patent. Patent applicants and patent owners should keep the correspondence address and any fee address current for the patent to ensure that correspondence is mailed to applicant's or patentee's current address. In an abandoned application, the Office may attempt to communicate with applicant regarding a petition for access. If the address has not been updated, then the Office may not be able to consider applicant's views in deciding whether to release the application to a member of the public. The Customer Number Practice described in section 403 of the *Manual of Patent Examining Procedure (MPEP)* (7th ed. 1998) (Rev. 1, Feb. 2000) provides a procedure where a patent applicant or owner can easily change the correspondence address for a number of patents or patent applications. In addition, the ''Fee Address'' Indication Form (PTO/SB/47) (reproduced at *MPEP* 2595) enables a patent owner to complete one form to designate a single fee address for any number of patents or applications in which the issue fee has been paid.

When changing the address(es) associated with a patent, the patent owner should bear in mind that the Office has a number of addresses related to the patent: (1) An application correspondence address; (2) the return address for the assignment documents; and (3) the fee address for maintenance fee purposes. *See MPEP* 2540. The correspondence address is the address to which Office actions and notices are mailed during the patent application process and is often not current within a few years of patent issuance. As a result, the regulations related to reexamination proceedings require that a patent owner be served with a copy of a Reexamination Request at the Office of Enrollment and Discipline address for the attorney or agent of record, if there is an attorney or agent of record. *See MPEP* 2220. If there is no attorney or agent of record, the copy is required to be served upon the patent owner. *See* 37 CFR 1.33(c). In the procedure to obtain a copy of a patent file set forth in this notice, the request will be directed to the correspondence address.

The Office is planning for full electronic submission of applications and related documents by fiscal year 2003. Once the Office transitions to a total Electronic File Wrapper environment, the inability to locate a paper application file should no longer be a significant issue. However, this rule change is necessary to provide for the replacement of unlocatable application and patent files until the Office has completely transitioned to a total Electronic File Wrapper environment.

### Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.251 is added to set forth a procedure for the reconstruction of the file of a patent application, patent, or any other patent-related proceeding that cannot be located after a reasonable search. The phrase ''an application'' applies to any type of application (national or international), and regardless of the status (pending or abandoned) of the application.

Section 1.251(a) provides that in the event the Office cannot locate the file of an application, patent, or any other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice. The applicant or patentee may comply with a notice under § 1.251 by providing: (1) A copy of his or her record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents); (2) a list of such correspondence; and (3) a statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records (§ 1.251(a)(1)). The applicant or patentee may also comply with a notice under § 1.251 by: (1) Producing his or her record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and (2) providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records (§ 1.251(a)(2)). If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee must comply with a notice under § 1.251 by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (§ 1.251(a)(3)).

According to § 1.251(a), if the applicant or patentee possesses all or just some of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply by providing a copy of (or producing) his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (§§ 1.251(a)(1) or (a)(2)). If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply with a statement to that effect (§ 1.251(a)(3)).

Any appendix or information disclosure statement submitted with an application is not contained in the Office's PACR database. Therefore, the applicant or patentee must also provide a copy of any appendix or information disclosure statement (except in the limited circumstance discussed below) submitted with the application. Since the Office can obtain copies of U.S. patent documents (U.S. patent application publications and patents) from its internal databases, the Office is not requiring applicants or patentees to provide copies of U.S. patent application publications and patents that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

Section 1.251(b) provides that with regard to a pending application, the failure to provide a reply to such a notice within the time period set in the notice will result in abandonment of the application.

**Response to Comments**

The Office published a notice proposing changes to the rules of practice to provide for the replacement of application and patent files that cannot be located after a reasonable search. *See Treatment of Unlocatable Application and Patent Files*, Notice of Proposed Rulemaking, 65 FR 42309 (July 10, 2000), 1237 *Off. Gaz. Pat. Office* 28 (Aug. 1, 2000) (notice of proposed rulemaking). The Office received eleven written comments (from intellectual property organizations, patent practitioners, and the general public) in response to the notice of proposed rulemaking. Comments generally in support of the change are not discussed. The comments and the Office's responses to the remaining comments follow:

*Comment 1:* Several comments inquired as to how long an applicant or patentee will be given to provide a copy of the file in reply to a notice under § 1.251. The comments suggested that: (1) Applicants be given a minimum period of three months to reply to a notice under § 1.251; (2) this period for reply be set forth in § 1.251 (rather than merely set forth in the *MPEP* or left completely up to the discretion of Office officials); and (3) this period for reply be extendable under § 1.136(a). One comment also suggested that patentees be given at least five months to reply to a notice under § 1.251.

*Response:* The Office will set a time period of three months for reply in a notice under § 1.251 in an application. The time period will be extendable under § 1.136(a) (unless the notice indicates otherwise) by three months up to a maximum period for reply of six months in an application. *See* 35 U.S.C. 133.

The Office will set a time period of six months for reply in a notice under § 1.251 in a patent. The time period will not be extendable under § 1.136(a) in a patent because 35 U.S.C. 41(a)(8) only authorizes the Office to charge fees for extensions of time in proceedings involving an application. *See MPEP* 2265.

Section 1.251 will not include these time periods. These time periods, however, will be included in the *MPEP* and not left to the complete discretion of various Office officials.

*Comment 2:* One comment suggested that there should be no reduction in patent term adjustment for the entire delay for the initial search and for compliance with a notice under § 1.251. Another comment suggested that for purposes of patent term adjustment, all of the time taken to reconstruct the file ''should be charged against the Office.''

*Response:* Patent term and patent term adjustment are provided for by statute. *See* 35 U.S.C. 154(a)(2) and (b) and 173. The inability to locate an application file in and of itself does not give rise to patent term adjustment under 35 U.S.C. 154(b). Rather, patent term adjustment is an issue only if the inability to locate the application file causes the Office to miss one of the time frames specified in 35 U.S.C. 154(b)(1)(A) or (B), or prolongs the duration of one of the proceedings specified in 35 U.S.C. 154(b)(1)(C). In addition, if an applicant fails to reply to a notice under § 1.251 within three

months of its mailing date, any patent term adjustment under 35 U.S.C. 154(b) will be reduced by a period equal to the number of days (if any) beginning on the day after the date that is three months after the mailing date of the notice under § 1.251 and ending on the date the reply to the notice under § 1.251 was filed. *See* 35 U.S.C. 154(b)(2)(C)(ii) and § 1.704(b).

*Comment 3:* Several comments inquired as to what steps are taken to search for a file before it is determined to be unlocatable (*i.e.*, inquired as to what is a reasonable search). One comment expressed concern that the procedure in § 1.251 not be used as a substitute for a reasonable search for such a file. Another comment suggested that a reasonable time limit (*e.g.*, three months) be established for such a search so that reconstruction of the file (if necessary) can begin promptly.

*Response:* When an application file is determined to be unlocatable, the Official Search Unit or a Technology Center designee conducts a search for the application file in every location where the application file might reasonably be located: *e.g.*, its location as indicated in the Office automated application tracking system (the Patent Application Locating and Monitoring or PALM system), the examiner's office, and the Technology Center's central files, technical support, and receptionist areas. If the application file still cannot be located, the application is flagged as ''lost'' in the PALM system. The flagging of an application in the PALM system as ''lost'' causes the PALM system to signal any person who then attempts a PALM transaction for the application (for which the application file is required) that the application file was previously unlocatable and should be taken to the person who was conducting a search for the application file. If no PALM transaction for the application occurs within thirty days, the Office then begins the file reconstruction process.

*Comment 4:* One comment opposed the proposed change on the basis that it did not address the problem (*i.e.,* the Office's inability to locate certain files). The comment indicated that the Office should better train its staff to track application and patent files, and to conduct a more diligent search for an application or patent files.

*Response:* The Office is addressing this issue by: (1) Revising procedures for searches for applications; and (2) moving towards a total Electronic File Wrapper environment. Nevertheless, the majority of comments recognize that establishing procedures for the prompt reconstruction of unlocatable files is important not only to the conduct of business before the Office, but is also important to the public (third parties) which relies upon the information in a patent file when conducting an infringement or validity analysis.

*Comment 5:* One comment suggested that the Office provide a printout of the contents entries from the Office's PALM system with any notice under § 1.251 to assist the applicant or patentee.

*Response:* The suggestion is adopted.

*Comment 6:* One comment inquired as to how long it takes the Office to realize it has lost a file.

*Response:* The Office usually realizes that it cannot locate a patent file when a member of the public requests a copy of the file. The Office usually realizes that it cannot locate an application file when its PALM system indicates that the application is due for some action.

*Comment 7:* One comment inquired as to how long it will take for the Office to act on an application once the file has been reconstructed.

*Response:* Once an application file has been reconstructed, it is docketed for action based upon its stage in the application examination process. In most situations, the application will be acted upon immediately.

*Comment 8:* Several comments suggested that the Office should take special steps with files that have been reconstructed to ensure that the applicant or patentee is not again required to provide a copy of the file.

*Response:* The Office takes the steps that can reasonably be taken to avoid misplacing any application or patent file. Thus, there are no further ''special'' steps that could reasonably be taken to avoid misplacing reconstructed application or patent files.

*Comment 9:* One comment suggested that the Office should first attempt to reconstruct the file based upon the material it has (*i.e.,* copies of Office actions, and sequence listings), and then require the applicant or patentee to supply the specific materials that the Office does not have. Another comment suggested that the applicant or patentee should not be required to produce copies of documents available to the Office from other sources (*e.g.,* U.S. or foreign patents or patent publications).

*Response:* The Office has considered attempting to reconstruct portions of the application or patent file based upon material contained in other Office databases. These databases, however, do not always contain accurate or complete copies of the papers actually in the application or patent file (*e.g.,* Office actions may be draft or incomplete and may not include the pre-printed forms sent with Office actions). The best way to reconstruct an application or patent file quickly, completely, and accurately is to obtain a copy of the applicant or patentee's records of correspondence between the Office and applicant or patentee for the application or patent.

The Office can obtain copies of U.S. patent application publications and patents from its databases. Therefore, the Office is not requiring applicants or patentees to provide copies of U.S. patent application publications and patents that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding. The Office, however, may not be able to obtain copies of foreign patent documents or nonpatent literature from its databases. Therefore, the Office is requiring applicants or patentees to provide copies of foreign patent documents and nonpatent literature that are among the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

*Comment 10:* One comment suggested that the applicant or patentee be required to provide a copy of only the papers formally of record in the application or patent file (*i.e.,* not proposed amendments submitted to an examiner for consideration on an informal basis).

*Response:* The applicant or patentee is required to provide a copy of applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. While an ''informal'' (or ''proposed'') amendment submitted to an examiner for consideration is not entered into the specification or drawings of the application, Office practice is to make such an informal or proposed amendment of record in the application file (usually by attachment to an interview summary record). Thus, ''informal'' amendments submitted to examiners for consideration are part of the correspondence between the Office and the applicant (or patentee) that must be submitted (if contained in applicant's or patentee's records of the application or patent).

*Comment 11:* One comment questioned whether § 1.251 applies when the file is otherwise available, but is missing specific documents.

*Response:* Section 1.251 generally applies only to situations in which the file of an application or patent (not just certain documents) is unlocatable. When a document is missing from an application, Office practice is to call the applicant's representative and request

submission (generally by facsimile) of a copy of the missing document. While the Office intends to continue to treat missing documents in this relatively informal manner (rather than issuing a notice under § 1.251), the Office may issue a notice under § 1.251 to obtain a copy of a missing document if the Office's informal attempts to obtain a copy of the document are unsuccessful.

*Comment 12:* One comment questioned what the Office does with the original file if it is discovered after the file has been reconstructed.

*Response:* The Office will combine the papers into a single file wrapper and then destroy the other file wrapper (as well as any duplicate papers).

*Comment 13:* One comment argued that the provisions of § 1.251 are not effective as to a patentee since there is no threat (*e.g.,* threat of abandonment) if a patentee does not comply with a notice requiring a copy of the patent file. Another comment suggested that the Office expressly indicate that there is no consequence if a patentee fails to comply with a notice under § 1.251 because a statutory change would be required for the Office to be able to impose a consequence such as lapse of the patent on a patentee.

*Response:* If a patentee does not timely reply to a notice under § 1.251, the patent will not ''lapse'' or expire. Nevertheless, it is incorrect to say that there is no consequence to a patentee who fails to comply with a notice under § 1.251. If a patentee fails to timely comply with a notice under § 1.251, the only certified copy of the patent file that the Office will be able to produce will be a copy of the patent and a copy of the application-as-filed (which may have an adverse impact during attempts to enforce the patent). In addition, if the patent is involved in a proceeding before the Office, the Office may take action under § 1.616 or § 10.18. Thus, the provisions of § 1.251 will be effective as to a patentee even in the absence of a statutory change to impose some other consequence (*e.g.,* lapse of the patent).

*Comment 14:* Several comments argued that the threat of holding an application abandoned when the file was lost by the Office was patently unfair. One comment suggested that the sanction for noncooperation with a requirement for a copy of the application file for applications subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2) be a reduction of any patent term adjustment under 35 U.S.C. 154(b), and that the sanction for noncooperation with a requirement for a copy of the application file for applications not subject to the twenty-year patent term provisions of 35 U.S.C. 154(a)(2) be a requirement for a terminal disclaimer.

*Response:* As discussed above, the Office cannot process or examine an application if its file is unlocatable. Treating noncooperation with a requirement for a copy of the application file for applications solely by a reduction of any patent term adjustment or requirement for a terminal disclaimer would give rise to an open-ended suspension of action for any application in which the applicant chooses not to timely reply to a notice under § 1.251.

It is well established that keeping an application pending before the Office for an indeterminate period of time with no prospect of action being taken by either the Office or the applicant is not consistent with the spirit of the patent application examination process. *See Planning-Machine Co.* v. *Keith,* 101 U.S. (11 Otto) 479, 485 (1879) (applicant cannot without cause hold an application pending during a long period without prosecuting the application). If an applicant fails to cooperate with the Office's attempt to reconstruct the file of an unlocatable application, there is no prospect of action being taken by either the Office or the applicant until the applicant replies to the notice under § 1.251. Therefore, if the file of an application is unlocatable and the applicant fails to cooperate with the Office's attempt to reconstruct the file, it is appropriate to terminate proceedings in that application and treat the application as abandoned.

*Comment 15:* One comment suggested that if an application becomes abandoned for failure to reply to a notice under § 1.251, the applicant should be able to revive the application. Another comment suggested that the Office should permit the applicant to revive the application for unintentional abandonment at no cost to the applicant (the cost being absorbed by the Office).

*Response:* An application abandoned for failure to timely reply to a notice under § 1.251 may be revived pursuant to § 1.137, provided that the conditions specified in § 1.137 can be met (*i.e.*, the delay in reply to the notice under § 1.215 was unavoidable or unintentional). 35 U.S.C. 41(a)(7) requires the Office to charge a fee for filing a petition to revive an abandoned application, regardless of whether the delay was unintentional or unavoidable. In any event, an application abandoned for failure to timely reply to a notice under § 1.251 is not abandoned because the Office cannot locate the application, but because the applicant failed to timely reply to the notice under § 1.251.

*Comment 16:* Several comments argued that applicants and patentees are unable to state with absolute confidence that their records are a complete and accurate copy of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding (since correspondence from the Office may have been lost in the mail). Some comments suggested that an applicant or patentee be required to state only that the copy is a complete and accurate copy of the applicant or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding. Another comment suggested that an applicant or patentee be required to state only that the copy is complete and accurate to the best of the individual's knowledge and belief, upon reasonable investigation.

*Response:* Sections 1.251(b)(1) and (b)(2) as proposed provided for the situation in which the applicant or patentee possessed a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, and § 1.251(b)(3) as proposed provided for the situation in which an applicant or patentee did not possess a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. Since applicants and patentees cannot be certain of whether their records are a complete and accurate copy of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, §§ 1.251(a)(1) and (a)(2) as adopted provide for the situation in which the applicant or patentee possesses some record (whether complete or incomplete) of the correspondence between the Office and the applicant or patentee, and § 1.251(a)(3) provides for the rare situation in which an applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee.

Sections 1.251(a)(1) and (a)(2) will require a statement that the copy produced by applicant or patentee is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the

Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records. An applicant or patentee should be able to state with confidence that the copy provided to or produced for the Office is a complete and accurate copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee, and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patent's records.

*Comment 17:* One comment suggested that § 1.251 was unclear as to whether the applicant or patentee was being required to state that the copy being produced by the applicant or patentee for copying by the Office, or the copy produced by the Office, was a complete and accurate copy of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding.

*Response:* Section 1.251(a)(2) requires a statement that the copy produced by applicant or patentee (not the copy produced by the Office) is a complete and accurate copy of applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

*Comment 18:* One comment required that the Office indicate where or to whom the applicant or patentee is to produce the applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding for copying by the Office.

*Response:* If an applicant or patentee decides to produce his or her record of the correspondence between the Office and the applicant or patentee for the application, patent, or other proceeding for copying by the Office under § 1.251(a)(2) (rather than provide a copy under § 1.251(a)(1)), the record should be brought to the Customer Service Center in the Office of Initial Patent Examination (Crystal Plaza 2, 2011 South Clark Place, Arlington, VA 22202).

*Comment 19:* One comment noted that § 1.251 provides the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy when the applicant or patentee possesses a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. The comment suggests that the Office should also provide the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy when the applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

*Response:* Section 1.251(a)(2) provides the option of producing the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy even when the applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

*Comment 20:* Several comments suggested that the Office should reimburse applicants or patentees for the costs of copying the application or patent file and delivering the copy to the Office.

*Response:* The Office does not currently reimburse applicants or patentees for the costs of copying the application or patent file and delivering the copy to the Office. The changes in this final rule will not affect the costs of copying the application or patent file and delivering the copy to the Office as compared to current practice. The Office will study the reimbursement question to consider the costs and operational considerations associated with such a proposal.

## Classification

### *Administrative Procedure Act*

The changes in this final rule concern only the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding. Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

### *Regulatory Flexibility Act*

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

### *Executive Order 13132*

This document does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

### *Executive Order 12866*

This document has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

### *Paperwork Reduction Act*

This document involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this document was submitted for approval by OMB under control number 0651–0031. The United States Patent and Trademark Office submitted this information collection package to OMB for its review and approval because the changes in this notice affect the information collection requirements associated with that information collection package.

The title, description, and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice is to set forth the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding.

*OMB Number:* 0651–0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.

*Type of Review:* Approved through October of 2002.

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 2,231,365.

*Estimated Time Per Response:* 0.46 hours.

*Estimated Total Annual Burden Hours:* 1,018,736 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: Desk Officer for the United States Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.251 is added immediately following § 1.248 to read as follows:

**§ 1.251 Unlocatable file.**

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice in accordance with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Applicant or patentee may comply with a notice under this section by providing:

(i) A copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents);

(ii) A list of such correspondence; and

(iii) A statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(2) Applicant or patentee may comply with a notice under this section by:

(i) Producing the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and

(ii) Providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(3) If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, applicant or patentee must comply with a notice under this section by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(b) With regard to a pending application, failure to comply with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section within the time period set in the notice will result in abandonment of the application.

Dated: October 31, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–29411 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–16–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 90

**[ET Docket No. 98–237; FCC 00–363]**

### 3650–3700 MHz Government Transfer

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allocates 50 megahertz of spectrum in the 3650–3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. We are ''grandfathering'' existing fixed satellite service (''FSS'') earth station sites in this band and, for a limited time, will accept new applications for FSS earth stations in the vicinity (*i.e.*, within 10 miles) of these grandfathered sites to operate on a co-primary basis in the band. We will also permit additional FSS earth station operations on a secondary basis. This will ensure the continuity of FSS operations and permit new FSS operations to help alleviate congestion in the adjacent 3700–4200 MHz FSS band. Finally, to provide for compatibility with both terrestrial fixed service and FSS operations in the band, we are limiting the terrestrial mobile service use of the band to base station operations.

**DATES:** Effective February 15, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rodney Conway, Office of Engineering and Technology, (202) 418–2904.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *First Report and Order,* ET Docket No. 98–237, FCC 00–363 adopted October 12, 2000, and released October 23, 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, and also may be purchased from the Commission's duplication contractor, International

Transcription Service, (202) 857–3800, 1231 20th Street, NW. Washington, DC 20036.

**Summary of the Report and Order**

1. Based on the record in this proceeding and the need to balance competing demands for this spectrum, we are adopting our proposal to allocate the 3650–3700 MHz band for terrestrial fixed service operations on a primary basis. As indicated by the commenting parties, allocation of this band on a primary basis for fixed service will facilitate the operation of a broad range of new advanced services. We believe that the 3650–3700 MHz band is situated low enough in the radiofrequency spectrum so as to permit favorable transmission characteristics which will allow the establishment of service links that can cover significant distances. In addition, 50 megahertz will provide enough bandwidth to allow for high speed digital data and video services. These characteristics should prove useful in establishing basic and advanced telecommunications services within rural areas of the country.

The need for advanced services in rural areas has been well documented in recent studies. These studies conclude that Americans living in rural areas and inner cities do not have access to advanced services that are comparable to services available to people living in other areas. A lack of broadband infrastructure could limit the potential of these communities to attract and retain businesses and jobs, especially businesses that are dependent on electronic commerce. Lack of infrastructure could also restrict community access to education, health care, and recreational services. We conclude that allocation of the 3650–3700 MHz band for the fixed service will serve the public interest by providing broadband data services to residential and business consumers, particularly in rural areas. Additionally, this allocation will facilitate an alternative means of providing basic telephone service, thus fostering a competitive market structure for direct public switched telephone network (''PSTN'') access for rural and underserved areas of the U.S. For example, it could be used to provide unserved persons with a wireless connection to the PSTN and to economically serve high-cost wireline service areas, including rural areas.

2. Given the challenging spectrum sharing environment involving the relatively weaker satellite receive signals, we remain concerned about mobile station (*i.e.,* roving handset) operations in the 3650–3700 MHz band. However, while we note that mobile station operations may raise interference concerns, we find that land mobile base stations should be allowed to operate within the 3650–3700 MHz band. Mobile base stations are fixed and thus do not raise the same interference concerns as mobile handset operations. Mobile base stations in the 3650–3700 MHz band might operate with land mobile services offered in the 4940–4990 MHz band.

Specifically, the land mobile base stations could transmit in the 3650–3700 MHz band, and the land mobile receivers could use the 4940–4990 MHz band to transmit back to the land mobile base station. We therefore allocate the 3650–3700 MHz band to the mobile service on a nationwide co-primary basis with the fixed service. However, we limit this allocation to base station operations only. Consistent with the international allocation in this band, we are not permitting aeronautical mobile operations. Land mobile base stations in the 3650–3700 MHz band will be subject to the same coordination procedures as FS stations concerning grandfathered Government radiolocation and grandfathered FSS operations.

3. In the *Notice of Proposed Rule Making and Order* (''NPRM and Order''), 64 FR 2462, January 14, 1999, we imposed a freeze on the acceptance of applications for earth station operations in the 3650–3700 MHz band. We proposed to permanently implement this action, but sought comment on alternative methods to meet the terrestrial fixed service needs while minimizing the effect on FSS operations. While some satellite providers indicate that sharing on a co-primary basis is possible, we decline to adopt such a proposal. We recognize that fixed operations and FSS share spectrum in some bands. We will permit sharing to the extent it is technically possible and promotes efficient use of the spectrum.

However, in this band, allowing FSS on an unrestrained co-primary basis would impede any potential widespread use of the band for terrestrial services. Due to the weak signals that are received in the FSS, coordination with the higher-powered terrestrial operations would result in potentially large geographic areas where terrestrial services could not operate to avoid interference to FSS. The size and shape of these ''exclusion zones'' may be different for each FSS earth station site because factors such as shielding, antenna orientation and terrain elevation will vary from site to site. These coordination requirements and the presence of exclusion zones would significantly increase transaction costs and create a disincentive for deployment of new terrestrial operations. Thus, we find that unrestrained deployment of FSS earth stations could hinder or greatly inhibit the opportunities for terrestrial operations in the band.

4. Pursuant to the Balanced Budget Act of 1997, the National Telecommunications and Information Administration (''NTIA''), identified the 3650–3700 MHz band as a possible substitute for 15 megahertz at 1990–2110 MHz. A statutory condition of the substitution requires that alternative spectrum ''better serve the public interest, convenience, and necessity'' and that ''the alternative could reasonably be expected to produce comparable receipts.'' The other bands identified by NTIA as alternatives to the 15 megahertz at 1990–2110 MHz include: 944–960 MHz, 1390–1400 MHz, 1427–1432 MHz, 1670–1675 MHz, and 2500–2690 MHz. As noted in our Spectrum Policy Statement, the 944–960 MHz and 2500–2690 MHz bands are already used extensively for non-Government services. We also observe that portions of the 1390–1400 MHz and 1427–1432 MHz have already been allocated and assigned to non-Government use. The remaining portions of these bands and the 1670–1675 MHz band are small, noncontiguous segments and thus we believe are unlikely to raise comparable receipts as required by the BBA. Thus, with the exception of 3650–3700 MHz, none of the bands identified by NTIA is available to satisfy the requirements of the BBA. Because this 50 megahertz is at a higher frequency than 15 megahertz of spectrum identified in the 1990–2110 MHz band, additional bandwidth is required to compensate for increased path losses that occur in the 3650–3700 MHz band. For these reasons, we find that the 3650–3700 MHz band is an equivalent and viable substitute for 15 megahertz of spectrum at 1990–2110 MHz, taking into account differences in propagation characteristics between the two bands.

5. Because we are substituting the 3650–3700 MHz band for 15 megahertz of spectrum in the 1990–2110 MHz band, we must assign licenses for this spectrum by competitive bidding to satisfy the requirements of the BBA. Our allocation to the terrestrial services will enable us to establish service rules consistent with the statutory mandate to auction licenses for this spectrum.

6. Recently enacted legislation states that the Commission ''shall not assign spectrum used for international or

global satellite services by competitive bidding.'' FSS in this band has historically been restricted to international, intercontinental services. Given that this band is allocated for space-to-Earth or downlink services, this footnote implies that data is being transmitted from another country. Even if this restriction were not in place, the international inter-continental nature of the satellite systems deployed in this band results in a footprint that extends well beyond the U.S. border into other countries. Because FSS is, or may be, used for the provision of international satellite services in this band, we believe that the assignment of FSS licenses by competitive bidding would be inconsistent with the ORBIT Act.

While we do not plan to assign FSS licenses for the 3650–3700 MHz band by competitive bidding, we are taking a number of steps to continue to accommodate FSS use of the band. Specifically, we are: (1) Grandfathering existing FSS earth station sites on a co-primary basis; (2) providing a limited opportunity to request additional co-primary FSS earth station sites within 10 miles of existing grandfathered FSS earth station sites; and (3) allowing other new FSS earth station sites on a secondary basis. In addition, we note that the 3600–3650 MHz band remains available for FSS earth station operations on a primary basis.

7. While incumbent FSS operations could relocate to other bands that are available for FSS, relocation would necessitate significant reconfiguration costs and disrupt continuity of operations. Recognizing the importance of providing continuity of service to the public, we will grandfather existing FSS earth station sites indefinitely. We also believe that the Commission should not mandate relocation of FSS operations to other bands because FSS and terrestrial operations, as limited by this *First Report and Order,* are not fundamentally incompatible. We are not, however, precluding voluntary negotiations between existing FSS licensees and new terrestrial licensees for relocation where feasible.

8. We realize that grandfathering existing FSS earth station sites will impose constraints on new terrestrial operations. However, in many cases these new terrestrial fixed and mobile operations should be able to co-exist with existing FSS earth stations by ''engineering in'' facilities to avoid interference. Furthermore, many rural, remote and less densely populated areas that could benefit significantly from deployment of terrestrial fixed and mobile services are not effected by existing grandfathered FSS earth station sites. Thus, we conclude that grandfathering existing FSS earth station sites will not unreasonably constrain the new terrestrial services.

9. In the *Memorandum Opinion & Order (MO&O)*, 65 FR 36900, June 12, 2000, the Commission did not establish a time limit for the filing of FSS earth station applications. However, because the new FSS facilities permitted by the *MO&O* could affect the use of the 3650–3700 MHz band by the terrestrial services, we now find it necessary to establish a limit on the acceptance of such applications and on the construction of FSS facilities. Accordingly, applications for FSS earth stations in the 3650–3700 MHz band within 10 miles of the authorized coordinates of an existing grandfathered earth station submitted prior to December 1, 2000 and subsequently authorized for service by the Commission will be co-primary with the terrestrial services. Such FSS earth stations will be grandfathered as described above. We consider the filing of an FSS earth station application before the cut-off date to be an expression of immediate need consistent with the intent of the *MO&O.* However, applicants will be required to complete construction and be operational within one year from the date of initial authorization. If a license for an FSS earth station at a grandfathered site is assigned or transferred, the earth station will retain its grandfathered status, provided there is no change in the site coordinates. In addition, certain modifications are permitted to the extent there is no change in the site coordinates. Such modifications should be minor in nature and can include changes in the polarization and antenna orientation. However, changes such as an increase in the height of the center line of the dish or a change in geographical coordinates of greater than one second in either latitude or longitude would not be considered minor. Further, any change in the earth station antenna dish size that increases the likelihood of receiving interference will not be considered a minor change in facilities. If a license for a grandfathered FSS station is forfeited pursuant to section 25.161(c) of the Commission's rules, the site will no longer be considered primary and will lose its grandfathered status.

10. Subsequent to the end of the filing window, we will continue to accept applications for additional FSS earth stations. These authorizations, however, will be provided on a secondary basis only in the 3650–3700 MHz band. Secondary status will apply for new earth station sites located both inside and outside the coordination zones. We note that FSS earth stations only receive signals in this band, and thus cannot cause interference. We also note that secondary FSS earth stations are not entitled to protection from primary terrestrial operations. We find that allowing additional FSS expansion on a secondary basis will help alleviate congestion in the adjacent C-band (3700–4200 MHz) and allow FSS providers to market available capacity, while preserving opportunities for a viable terrestrial services. In addition, allowing additional FSS earth stations on a secondary basis may enable FSS providers licensed under Part 25 to enter into private arrangements with terrestrial service licensees in the secondary market for access to this spectrum. We note, however, that an agreement between a terrestrial service licensee and an FSS operator would not elevate an FSS earth station in this band to primary status relative to other FS licensees.

11. Consistent with our regulatory treatment of existing FSS earth stations, we will grandfather the sites currently used to provide TT&C operations. As a result those sites will receive the same protections as the other grandfathered FSS earth stations in the 3650–3700 MHz band, except that they will be protected only for the frequencies they are authorized to use for TT&C operations. Any other TT&C operations site that receives grandfathering protection in the 3650–3700 MHz band will also be protected only for the specific frequencies the site is authorized to operate on pursuant to the license it holds.

12. We deny the TT&C petition's request for a reservation of 10 MHz of spectrum in the 3650–3700 MHz band for TT&C operations, *See Public Notice,* Report Number 2306, dated November 23, 1998. We find that reserving 10 MHz of spectrum for TT&C operations for a few earth station sites would be an inefficient use of limited spectrum resources. We have determined that the public interest will be best served by adopting a regulatory framework that will foster the development and deployment of terrestrial services in the 3650–3700 MHz band. Nothing in part 2 of the Commission's rules prohibits TT&C operations under the FSS allocation in this band, or from grandfathered FSS earth station locations, provided the non-TT&C operations of the satellite system include operations in the fixed satellite service.

13. In the *NPRM and Order,* the Commission requested comment on a proposal to delete the unused secondary

non-Government radiolocation service allocation in the 3650–3700 MHz band. No comments were filed supporting the continued secondary allocation for the unused non-Government radiolocation service and we find no sufficient reason to maintain the secondary unused allocation. Accordingly, we adopt the proposal and delete the unused secondary non-Government radiolocation allocation to preserve the availability of the spectrum for use by the terrestrial services and FSS operations. We note that sufficient spectrum remains available within the 2900–3650 MHz band, on a secondary basis, to accommodate non-Government radiolocation service needs.

14. In the *NPRM and Order,* we noted that, as a condition of the transfer of the 3650–3700 MHz band to a mixed-use status, three Government radiolocation sites would be allowed to operate indefinitely in the band within an 80-kilometer ''radius of operation'' surrounding each site. NTIA indicates that a coordination distance of 80 kilometers around these three sites will provide adequate identification of spectrum conflicts, and that the Commission should coordinate any non-Government terrestrial service or FSS station within 80 kilometers of these sites with NTIA's Frequency Assignment Committee on a case-by-case basis. In the *NPRM and Order*, we requested comment on what actions should be taken to achieve this coordination in a manner to promote the ability of new non-Government services to co-exist with extremely high powered Government mobile radar systems in the adjacent 3300–3650 MHz band as well as with occassional high powered in-band use at three grandfathered Government radiolocation sites.

15. Because the requirement to protect the three grandfathered Government radiolocation sites at an 80 kilometer distance is a condition of the transfer of this spectrum, we adopt NTIA's proposal for an 80 kilometer coordination radius to ensure that these sites will be protected from interference. This requirement means that non-Government terrestrial service and FSS stations located within 80 kilometers of the three grandfathered Government radiolocation stations may not cause interference to the grandfathered Government radiolocation operations, that they must accept any interference received from such operations, and that they must be coordinated before commencing operation. The coordination requirement will apply to all non-Government stations, not just base station operations, because any station within the coordination zone could potentially cause interference to the protected Government operations.

Given that coordination is required only for areas within 80 kilometers of three grandfathered Government radiolocation sites, we find that this should affect a limited number of non-Government stations. We adopt this coordination requirement in a footnote to the Table of Allocations contained in Section 2.106 of the Commission's rules. The coordination procedures are addressed as part of the service rules in the *Second NPRM,* adopted simultaneously with the *First Report and Order* and published elsewhere in this issue of the **Federal Register**.

16. In the *NPRM and Order,* the Commission proposed to delete the Government radiolocation service allocation from the 3650–3700 MHz band, except for grandfathering three Government radio location sites that would continue operations in the band. The Commission also proposed to permit Government radiolocation operations in the 3650–3700 MHz band on Naval vessels at an appropriate distance from the shore. NTIA recommends the inclusion of a footnote to the Table of Frequency Allocations indicating that off-shore Government radiolocation operations may operate on a noninterference basis with authorized non-Government operations, and may not hinder the implementation of any non-Government operations. NTIA recommends that a distance of 30 nautical miles (55.5 kilometers) from shore be specified. It notes that this recommended distance is based upon limited information, and that a different distance may later be found appropriate after further measurements and experience with non-Government use of the 3650–3700 MHz band.

17. After carefully reviewing the comments concerning this issue, we find that NTIA's recommended distance of 30 nautical miles from the shore of the U.S. or its territories may be insufficient to protect non-Government services that will operate in the band. We note that NTIA has indicated previously that the operational radius of the three grandfathered Government radiolocation operations is 80 kilometers. We note that 80 kilometers is approximately equal to 44 nautical miles. We are concerned that allowing operation of Government radiolocation stations any closer than 44 nautical miles (80 kilometers) to the U.S. or its territories will have the potential to cause interference to non-Government operations in the band. Therefore, we specify a distance of 44 nautical miles, which is equivalent to the 80 kilometers grandfathered Government radiolocation ''radius of operation'' as described in the *NPRM and Order.* NTIA's request to include the Government radiolocation allocation via a footnote, as described, will not hinder the introduction of non-Government services in the band, given the 80-kilometer protection limit.

Additionally, offshore Government radiolocation stations will not be allowed to cause interference to non-Government stations, irrespective of their location. Further, if additional technical information and analysis is made available to us concerning any change in the distance requirements, we will consider altering the distance as appropriate.

18. In the *NPRM and Order*, we proposed to delete the unused Government aeronautical radionavigation service (ground based) allocation in the 3650–3700 MHz band. We see no useful purpose in continuing this allocation. Therefore, for the reasons set forth in the *NPRM and Order*, we adopt our proposal to delete the Government aeronautical radionavigation service (ground based) allocation from the 3650–3700 MHz band to preserve the band for non-Government use.

**Final Regulatory Flexibility Analysis**

19. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making and Order,* in ET Docket 98–237.[2] The Commission sought written public comments on the proposals in the *NPRM and Order*, including the IRFA. The Final Regulatory Flexibility Analysis (''FRFA'') in this *First Report and Order,* conforms to the RFA.[3]

*A. Need for and Objective of This Report and Order*

20. These rules allocate the 3650–3700 MHz band to the fixed, mobile (base stations only), and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These actions are taken in order to make this transfer spectrum available for commercial services, including those of any small businesses. The adoption of this *First*

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See 14 FCC Rcd 1295 (1999), 64 FR 2462, January 14, 1999.

[3] See 5 U.S.C. 604.

*Report and Order* will provide additional spectrum to be used in meeting the growing demand for fixed, mobile (base station only) and fixed satellite services among all sizes of providers.

*B. Legal Basis for Adopted Rules*

21. The adopted rule changes are authorized pursuant to Sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7).

*C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

22. No comments were filed in response to the IRFA that was contained in the *NPRM and Order* in this proceeding.

*D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

23. For purposes of this First Report and Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').[5]

24. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] The definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000.[8] There are 85,006 governmental jurisdictions in the nation.[9] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.[11]

25. The Commission has not developed a definition of small entities applicable to fixed satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with no more than 11.0 million in annual receipts.[12] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of 11 million or less and qualify as small entities.[13]

26. As described, the designations we hereby adopt will permit wireless services, as broadly defined to include fixed and mobile base station operations. Neither the Commission nor the SBA has developed a definition of small entities applicable to wireless services licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies.

27. The rules adopted by the First Report and Order will affect applicants who wish to provide fixed, mobile (base stations only) and/or fixed satellite services in the 3650–3700 MHz band. Pursuant to 47 CFR 24.702(b) the Commission has defined ''small entity'' for Blocks C and F broadband licensees as firms that had average gross revenues of less than $40 million dollars in the three previous calendar years. This Commission regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[14] With respect to the 3650–3700 MHz license applicants, we propose to use the small entity definition adopted in the Broadband PCS proceeding.

28. The Commission has not yet determined how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed which may result in additional small entities. In view of our lack of knowledge of the entities which will seek licenses in the 3650–3700 MHz band, we will assume that, for the purposes of our evaluations and conclusions in the FRFA, all of the prospective licensees are small entities, as that term is defined by the SBA or our definitions for the 3650–3700 MHz band. We invite comment on this analysis.

*E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

29. The rules adopted in the *First Report and Order* allocate the 3650–3700 MHz band to the fixed, mobile (base station operation, and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These adopted rules do not require any additional reporting, recordkeeping or other compliance requirements. Rules that may apply to the auctioning and licensing of these operations or other operating requirements will be addressed in the Second Notice of Proposed Rule Making in this proceeding and any reporting, recordkeeping and other compliance requirements will be addressed then.

*F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

30. No petition for rule making was filed to initiate this proceeding and there are no comments in this proceeding that suggest alternatives to the adopted allocation. We requested comment on alternatives that might minimize the amount of economic impact on small entities and no alternatives were offered. The allocation adopted in this First Report and Order represents the most efficient and least

[4] See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[5] See 15 U.S.C. 632.

[6] Id. Section 601(4).

[7] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[10] Id.

[11] See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[12] See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[13] See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms, 1992, SIC Code 4899 (issued May 1995).

[14] See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–82 (¶ 115) (1994), 59 FR 37566, July 22, 1994.

restrictive method to accomplish the Commission's policies and objectives.

*G. Federal Rules That May Duplicate, Overlap, or Conflict With the Rules*

31. None.

*H. Report to Congress*

32. The Commission will send a copy of the First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the First Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b).

**List of Subjects in 47 CFR Parts 2 and 90**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Page 54 is revised.

b. In the list of United States (US) Footnotes, footnote US110 is revised and footnotes US348 and US349 are added.

c. In the list of Non-Federal Government (NG) Footnotes, footnotes NG169 and NG170 are added.

d. In the list of Federal Government (G) Footnotes, footnotes G59 and G110 are revised.

The revisions and additions read as follows:

**§ 2.106 Table of Frequency Allocations.**

* * * * *

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| | | | | | |
|---|---|---|---|---|---|
| 2900-3100<br>RADIONAVIGATION S5.426<br>Radiolocation<br><br>S5.425 S5.427 | | | 2900-3100<br>MARITIME<br>RADIONAVIGATION<br>Radiolocation G56<br><br>S5.427 US44 US316 | 2900-3100<br>MARITIME<br>RADIONAVIGATION<br>Radiolocation US44<br><br>S5.5427 US316 | Maritime (80)<br>Private Land Mobile (90) |
| 3100-3300<br>RADIOLOCATION<br>Earth exploration-satellite (active)<br>Space research (active)<br><br>S5.149 S5.428 | | | 3100-3300<br>RADIOLOCATION S5.333<br>US110 G59<br><br>S5.149 | 3100-3300<br>Radiolocation S5.333<br>US110<br><br>S5.149 | Private Land Mobile (90) |
| 3300-3400<br>RADIOLOCATION<br><br>S5.149 S5.429 S5.430 | 3300-3400<br>RADIOLOCATION<br>Amateur<br>Fixed<br>Mobile<br><br>S5.149 S5.430 | 3300-3400<br>RADIOLOCATION<br>Amateur<br><br>S5.149 S5.429 | 3300-3500<br>RADIOLOCATION US108<br>G31<br><br>S5.149 | 3300-3500<br>Amateur<br>Radiolocation US108<br><br>S5.149 S5.282 | Private Land Mobile (90)<br>Amateur (97) |
| 3400-3600<br>FIXED<br>FIXED-SATELLITE<br>(space-to-Earth)<br>Mobile<br>Radiolocation<br><br>S5.431 | 3400-3500<br>FIXED<br>FIXED-SATELLITE (space-to-Earth)<br>Amateur<br>Mobile<br>Radiolocation S5.433<br><br>S5.282 S5.432 | | | | |
| 3600-4200<br>FIXED<br>FIXED-SATELLITE<br>(space-to-Earth)<br>Mobile | 3500-3700<br>FIXED<br>FIXED-SATELLITE (space-to-Earth)<br>MOBILE except aeronautical mobile<br>Radiolocation S5.433<br><br>S5.435 | | 3500-3650<br>RADIOLOCATION US110<br>G59<br>AERONAUTICAL<br>RADIONAVIGATION<br>(ground-based) G110<br><br>US245 | 3500-3600<br>Radiolocation US110<br><br>3600-3650<br>FIXED-SATELLITE<br>(space-to-Earth) US245<br>Radiolocation US110 | Private Land Mobile (90) |
| | | | 3650-3700<br><br>US245 US348 US349 | 3650-3700<br>FIXED<br>FIXED-SATELLITE<br>(space-to-Earth) NG169<br>MOBILE except aeronautical<br>mobile NG170<br><br>US245 US348 US349 | |
| | See next page for 3700-4200 MHz | | See next page for<br>3700-4200 MHz | See next page for<br>3700-4200 MHz | See next page for<br>3700-4200 MHz |

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* * * * *

**United States (US) Footnotes**

* * * * *

US110 In the bands 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 9500–10000 MHz, 13.4–14.0 GHz, 15.7–17.3 GHz, 24.05–24.25 GHz and 33.4–36.0 GHz, the non-Government radiolocation service shall be secondary to the Government radiolocation service and to airborne doppler radars at 8800 MHz, and shall provide protection to airport surface detection equipment (ASDE) operating between 15.7–16.2 GHz.

* * * * *

US348 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38° 10′ N., 76° 23′ W.); Pascagoula, MS (30° 22′ N., 88° 29′ W.); and Pensacola, FL (30° 21′ 28″ N., 87° 16′ 26″ W.). All fixed and fixed satellite operations within 80 kilometers of these sites shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee on a case-by-case basis.

US349 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Government operations.

* * * * *

**Non-Federal Government (NG) Footnotes**

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NG169 After December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650–3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650–3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial authorization. license applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless the proposed facilities are in the vicinity (*i.e.,* within 10 miles) of an authorized primary earth station operating in the band 3650–3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

NG170 In the band 3650–3700 MHz, the mobile except aeronautical mobile service is limited to base station operations. These base stations are subject to the same coordination procedures as fixed service operations in the band 3650–3700 MHz.

**Federal Government (G) Footnotes**

* * * * *

G59 In the bands 902–928 MHz, 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz and 24.05–24.25 GHz, all Government non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7–16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

* * * * *

G110 Government ground-based stations in the aeronautical radionavigation service may be authorized between 3500–3650 MHz when accommodation in the band 2700–2900 MHz is not technically and/or economically feasible.

* * * * *

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.103(b) is amended by removing the entry 3500 to 3700 under the heading ''megahertz'' in the frequency table and adding in numerical order the entry 3500 to 3650 to read as follows:

### § 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

| Frequency of band | Class of station(s) | Limitation |
|---|---|---|
| * * * * * | | |
| **Megahertz** | | |
| * * * * * | | |
| 3500 to 3650 | do | 12 |
| * * * * * | | |

* * * * *

[FR Doc. 00–28819 Filed 11–16–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 73 and 74

**[MM Docket No. 99–25; FCC 00–349]**

## Creation of Low Power Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects errors in the final rule portion regarding low power radio service published in the **Federal Register** of November 9, 2000.

**DATE:** Effective December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This contains corrections to the rule portion of the Commission's *Memorandum Opinion and Order on Reconsideration (''MO&O''),* MM 99–25; FCC 00–349, 65 FR 67289 (November 9, 2000). The full text of the Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

### Correction

### § 73.810 [Corrected]

1. In § 73.810, on page 67302, in the second column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

### § 73.860 [Corrected]

2. In § 73.860, on page 67304, in the first column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–29492 Filed 11–16–00; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF80**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 224**

**[Docket No. 991108299–0313–02; I.D. 102299A]**

**RIN 0648–XA39**

# Endangered and Threatened Species; Final Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (the Services) determine endangered status pursuant to the Endangered Species Act of 1973 (ESA), as amended, for the Gulf of Maine distinct population segment (DPS) of Atlantic salmon. A biological review team (BRT) composed of the Services' staff completed a comprehensive status review of Atlantic salmon which resulted in the proposed listing on November 17, 1999. After reviewing additional information, including information submitted during the comment period on the proposed listing, and after considering the low numbers of returning adults, the lower than anticipated parr to smolt survival, and the serious and continuing nature of threats to the species, the Services conclude that the Gulf of Maine DPS warrants protection under the ESA. The Services have determined that the Gulf of Maine DPS is in danger of extinction throughout its range.

**DATES:** The effective date of this rule is December 18, 2000.

**ADDRESSES:** The complete file for this final rule is available for inspection, by appointment, during normal business hours at the National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; or the U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035.

**FOR FURTHER INFORMATION CONTACT:** Mary Colligan, NMFS, at the address above (978–281–9116), or Paul Nickerson, FWS, at the address above (413–253–8615).

**SUPPLEMENTARY INFORMATION:**

## Background

### *Species Life History and Status*

A summary of the status of Atlantic salmon in Maine is included in this document. Additional biological information for the Gulf of Maine DPS of Atlantic salmon can be found in the Services' 1995 and 1999 status reviews. The 1999 Status Review can be viewed at the following site: http://news.fws.gov/salmon/asalmon.html. This information is also summarized in previous **Federal Register** documents (59 FR 3067, January 20, 1994; 60 FR 14410, March 17, 1995; 60 FR 50530, September 29, 1995; 62 FR 66325, December 18, 1997; 64 FR 62627, November 17, 1999).

### *Consideration as a ''Species'' Under the Endangered Species Act*

The ESA defines species as ''any species of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife that interbreeds when mature.'' 16 U.S.C. 1532(15). This definition allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies.

The Services have published a policy (61 FR 4722, February 7, 1996) to clarify the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying species under the ESA. This DPS policy identifies three elements to be considered in a decision regarding the status of a possible DPS as endangered or threatened under the ESA: (1) The *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs; (2) the *significance* of the population segment to the species or subspecies to which it belongs; and (3) the *conservation status* of the population segment in relation to the ESA listing standards. The conservation status for this DPS will be discussed in relation to the ESA's listing factors.

A population segment may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The Services examined life history, biogeographical, genetic, and environmental information in evaluating Atlantic salmon throughout its U.S. range. The Services used zoogeographic maps of boundaries between areas that likely exert different selective pressures on Atlantic salmon populations and have substantial differences in riverine-marine ecosystem structure and function. Key elements to these determinations include: (1) spatial arrangements of river systems that create isolation, and (2) watershed location within ecological provinces and subregions that affect the productivity and ecology of riverine-marine ecosystem complexes. Using zoogeographic maps, the Services determined that historic U.S. Atlantic salmon populations were comprised of at least three population segments: Long Island Sound, Central New England, and Gulf of Maine. As detailed in the 1999 Status Review, the Long Island Sound and the Central New England population segments have been extirpated. The following two sections on discreteness and significance provide the rationale for the Services' determination that the Gulf of Maine populations comprise a DPS.

The Gulf of Maine DPS includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. The DPS includes both early- and late-run Atlantic salmon (Baum, 1997). The river specific hatchery reared fish are also included as part of the DPS. However, these hatchery fish will not count toward a delisting until they have spawned naturally in the wild. Historically, the Androscoggin River delimited the range of the DPS to the south, but populations south of the Kennebec River have been extirpated.

There are at least eight rivers in the DPS range that still contain functioning wild salmon populations, although at substantially reduced abundance levels (Baum 1997; King *et al.* 1999). The core of these remnant populations is located in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers and Cove Brook.

### *Discreteness of the Gulf of Maine Population Segment of Atlantic Salmon*

The Services examined three major indicators to determine whether the Gulf of Maine population segment of Atlantic salmon is separate from other

populations: (1) Straying of spawning fish from their natal river; (2) recolonization rates outside the range of the population segment; and (3) genetic differences observed throughout the range of Atlantic salmon. The separateness analysis for the Gulf of Maine population segment from other Atlantic salmon populations reviewed the following: (1) persistence of these populations; (2) geographic segregation; (3) limited stocking from outside the population segment; and (4) genetic analyses. The Services conclude from this information that genetic and demographic data demonstrate the Gulf of Maine population segment is separate from other populations to the north.

The Services also conclude that while it is unlikely that any Atlantic salmon populations in the United States exist in a genetically pure native form, present populations are descendants of these aboriginal stocks, and their continued presence in indigenous habitat indicates that important heritable local adaptations still exist. The conservation of the populations of the Gulf of Maine population segment is essential because these Atlantic salmon represent the remaining genetic legacy of ancestral populations that were locally adapted to the rivers and streams of the region that formerly extended from the Housatonic River in Connecticut to the headwaters of the Aroostook River in Maine.

The northern range of the Gulf of Maine population segment is delimited by the natural zoogeographical constraints on local adaptations and an international boundary. There are substantial differences in the control of exploitation, management of habitat, conservation status, and regulatory mechanisms of Atlantic salmon between the United States and Canada (May, 1993; Baum, 1997). Management and conservation programs in the United States and Canada have similar goals, but differences in legislation and policy support the use of the United States/Canada international boundary as a measure of discreteness for the purposes of evaluating stock status. Therefore, the Services conclude that the Gulf of Maine population segment of Atlantic salmon satisfies both criteria for demonstrating discreteness, as outlined in the Services' DPS Policy. However, we note that it is only necessary to satisfy one of these criteria to conclude that the population segment is discrete from other populations.

*Significance of the Gulf of Maine Population Segment of Atlantic Salmon*

The second element of the Services' DPS Policy is the consideration of the population segment's biological and ecological significance to the taxon to which it belongs. This may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Riverine habitat occupied by the Gulf of Maine population segment of Atlantic salmon is unique in that it is at the southern extent of the North American range of Atlantic salmon (Saunders, 1981; Baum, 1997). To survive at the extreme southern range, U.S. Atlantic salmon populations had to adapt to distinct physical and environmental conditions (Saunders, 1981). The Services conclude that there is substantial evidence that remnant populations of the Gulf of Maine population segment have persisted in their native range. The loss of this population segment would result in a significant gap in the range of this taxon, moving the range of this species an additional degree of latitude to the north. The loss of these populations would restrict the natural range of Atlantic salmon to the region above the 45$^{th}$ parallel and beyond the borders of the United States.

We cannot ignore that artificial selection created by hatchery practices has had some influence upon the present genome of the Gulf of Maine population segment. Given our current understanding of the genetic composition of these stocks (Bentzen and Wright, 1992; Kornfield, 1994; King *et al.*, 1999), the documented persistence of native stocks (Kendall, 1935; Baum, 1997), and the fact that most of the hatchery stocking influences were internal to the Gulf of Maine population segment range, the Services conclude that hatchery fish have not substantially introgressed with the remnant populations and genomes of the fish that comprise the Gulf of Maine population segment. The majority of fish stocked into the population segment rivers came from the Penobscot hatchery stock, which, in turn, had originated from the population segment rivers earlier this century (Baum, 1997). The Services believe that there is an important genetic legacy remaining in the population segment, and the loss of these populations would negatively affect the genetic resources of Atlantic salmon as a whole because it would contribute to further range reduction. The genetic resources of these most southerly stocks are considered vitally important to the species' future survival.

Based on a review of available information, the Services concluded that the Gulf of Maine population segment of Atlantic salmon meets both criteria for discreteness. Available data demonstrate that the population segment has unique life history characteristics that have a heritable basis and that both environmental and genetic factors make the Gulf of Maine population segment different from other populations of Atlantic salmon in their life history and ecology. Further, the Services conclude that the available information supports the conclusion that the Gulf of Maine population segment of Atlantic salmon is biologically and ecologically significant. The Gulf of Maine population segment satisfies the first two criteria of the Services' DPS policy because it is both discrete and significant, and therefore, it is a DPS. The third and final element is the conservation status of the population segment in relation to the ESA's standards for listing. The conservation status of the DPS is examined in the following sections which provide an overview of the habitat within the DPS, population abundance, and an analysis of the listing factors.

*Description of the Habitat Within the Gulf of Maine DPS*

The Gulf of Maine DPS encompasses all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. The Penobscot and its tributaries are only included downstream from the site of the Bangor Dam. The watershed structure, available Atlantic salmon habitat, and abundance of Atlantic salmon stocks at various life stages are best known for the seven largest rivers with extant Atlantic salmon populations. There is less known about the habitat and population ecology of smaller rivers, with the possible exception of Cove Brook (Meister, 1962; Baum, 1997).

Broadly speaking, the watersheds within the DPS are sparsely populated and generally are managed for the growth and harvest of forest products and lowbush blueberries. The Ducktrap and Sheepscot River watersheds were once intensively farmed but are now mostly forested. The habitat within the

DPS range is generally characterized as being free-flowing, medium gradient, cool in water temperature, and suitable for spawning in gravel substrate areas.

*Population Abundance of the Gulf of Maine DPS*

Abundance is a critical criterion in assessing the status of a species under the ESA. Current abundance compared to historical levels and analysis of recent trends were used to determine the biological status of Atlantic salmon of the Gulf of Maine DPS. Documented returns of adult Atlantic salmon within the DPS range are low relative to conservation escapement goals (U.S. Atlantic Salmon Assessment Committee (USASAC), 1999). The conservation escapement goal is defined as the number of returning adults needed to fully use the spawning habitat. The total documented natural (wild & stocked fry) spawner returns to the rivers of the Gulf of Maine DPS range for the past 5 years were: 1995 (83); 1996 (74); 1997 (35); 1998 (23); 1999 (32); and 2000 (22) (preliminary data). It must be noted that counts are provided only for rivers with trapping facilities and only for periods when those facilities were operational. Therefore, the documented count does not represent a complete count of adult returns to the rivers within the DPS range.

The pre-fishery abundance index of North American salmon stocks that migrate to the Greenland region of the North Atlantic Ocean continues to be low in spite of apparently improving marine habitat conditions as reflected by ocean surface temperature data in the past few years (North Atlantic Salmon Work Group (NASWG), 1999). The pre-fishery abundance is an estimate of the one sea winter fish (1SW), (fish that have spent one winter in the sea since leaving the river) in Greenland prior to the fishery and is used as a possible indicator of future returns to homewaters. The apparent non-response to improving marine habitat to date is believed to be caused, in part, by generally depressed spawning populations in North American home rivers and the resultant low number of juvenile salmon entering the ocean.

Generally speaking, densities of young-of-the-year salmon (0+) and parr (1+ and 2+) remain low relative to potential carrying capacity. The numbers indicate how long the parr have been in the rivers subsequent to hatching. In Maine, most parr remain in the rivers for 2 years. These depressed juvenile abundances, where not supplemented by stocking, are a direct result of low adult returns in recent years. A total parr population estimate is not available for the entire DPS. However, the Atlantic Salmon Commission (ASC) and NMFS have conducted a basin-wide parr population study on the Narraguagus River since 1991. In addition, the NMFS and the ASC have been conducting a study on the Narraguagus River, monitoring the outmigration of smolts including the timing of migration, survival, length, weight, and the number of smolts from 1996 through 1999 (Kocik *et al.*, 1998a).

Since 1996, estimates of large parr in the Narraguagus River have ranged from 11,700 to 27,000, while corresponding outmigrating smolt estimates range from 2,800 to 3,600. Even in years with a substantial increase in large parr production (126 percent), smolt production has increased only modestly (3 percent). Total estimated smolt production in the Narraguagus is well below the estimated production capacity (18,000) and warrants further investigation. The preliminary estimate of the emigrant smolt population in the Narraguagus in 1999 was 3,607, which would represent production from the 1996–1997 spawners. Based on this, an average overwinter survival for 1999 was calculated to be 14.3 percent. Overwinter survival in 1999 was significantly lower than observed in 1997 (24.4 percent) and not statistically significantly different from 1998 estimates. These studies suggest that there is a 99–percent probability that overwinter freshwater survival from 1+ and older parr to smolt was less than 30 percent, the minimum estimate cited in previous studies. Survival estimates in the Narraguagus River for all years studied are substantially lower than estimates previously reported in scientific literature and previously accepted estimates for this region (Bley, 1987; Bley and Moring, 1988; Baum, 1997; Kocik *et al.*, 1999). Thus, smolt production from freshwater habitat is much lower than would be expected based on habitat surveys and prior estimates of survival rates. These substantially lower survival rates could be negatively impacting population recovery. Additionally, researchers found that approximately half of the emigrating smolts do not reach the Gulf of Maine. These preliminary data led the Services to conclude that low overwinter and emigration survival rates may be impeding the recovery of these populations and are an issue of concern. The cause for the low survival rates has not been identified.

To determine if recent pre-smolt and marine survival estimates on the Narraguagus River are representative of other downeast Maine Atlantic salmon rivers, a similar study was conducted on the Pleasant River. In 1999 from April to June, 676 smolts were captured in a smolt trap on the Pleasant River. An additional 31 fish were captured with fin deformities and coloration, and body form suggesting that they were of hatchery origin. A commercial hatchery that raises Atlantic salmon smolt is located upstream of the capture site.

Given the data reviewed and summarized in this section, the Services conclude that naturally reproducing Atlantic salmon populations of the Gulf of Maine DPS are at extremely low levels of abundance. This conclusion is based principally on the fact that spawner abundance is less than 10 percent of the number required to maximize juvenile production, juvenile abundance indices are lower than historical counts, and freshwater smolt production is less than a third of estimated capacity. Fry are being stocked to fill available habitat and parr abundance is increasing as a result. The number of smolts leaving the river, however, is not increasing at the same rate.

*Conservation Hatchery Program*

Broodstock developed from wild fish from the Dennys, East Machias, Machias, Narraguagus and Sheepscot Rivers are held at Craig Brook National Fish Hatchery (CBNFH) in Orland, Maine. These captive broodstock increase the effective population size for these rivers and provide a buffer against extinction. Parr were collected from the Pleasant River and were transferred to the North Attleboro National Fish Hatchery (NANFH) in Massachusetts. These Pleasant River fish were later destroyed due to the presence of a newly discovered Atlantic salmon viral disease, Salmon Swimbladder Sarcoma Virus (SSSV). In the spring of 2000, program cooperators initiated a second attempt to rebuild a captive wild broodstock for the Pleasant River salmon population. This was made possible by the creation of six isolation bays as part of the reconstruction of the CBNFH. A trap on the Pleasant River at Columbia Falls captured emigrating Atlantic salmon smolts to help enumerate the population and to determine origin (wild or aquaculture). A total of 37 smolts and 24 age 2+ parr were brought into the CBNFH for holding until they mature for broodstock. Subsequently, 52 age 1+ parr were collected during the summer of 2000 to augment the earlier smolt and parr collections.

The response of Atlantic salmon populations to supplemental stocking programs can be partially evaluated based on juvenile production, but adult

returns are the ultimate evaluation measure. It takes over 4 years from initial fry stocking to detect a response to that stocking in terms of returning adults. A substantial number of fry must be stocked to produce significant results due to the normal high mortality of juvenile fish. Because stocking did not begin in some rivers until 1996 and several year classes are necessary to present a trend, it will not be known until at least 2001 if fry-stocked fish will contribute a substantial element to all five rivers for which there is a river-specific stocking program.

All of the broodstock held at the CBNFH are now fitted with Passive Integrated Transponder (PIT) tags which allow for complete tracking and management of the broodstock, as well as tracking the mating and offspring of the broodstock. In 1999, the FWS expanded its Atlantic salmon genetics program to include genetic characterization of all broodfish used for the rehabilitation of Maine's wild populations. This characterization will help managers maintain the genetic integrity of wild and captive fish, identify appropriate management units, help prevent irreversible losses of genetic diversity, and evaluate the stocking program. Additional details on protocols used within CBNFH are described in the ''Response to Comments'' section of this document. In addition to the CBNFH program, the Maine aquaculture industry is participating in the supplementation program by raising fish derived from the broodstock. These fish were stocked in the Dennys and Machias Rivers as potential spawners in the fall of 2000.

*Previous Federal Actions*

In 1991, the FWS designated Atlantic salmon in five rivers in ''Downeast'' Maine (the Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers) as Category 2 candidate species under the ESA (56 FR 58804, November 21, 1991). Both Services received identical petitions in October and November of 1993 to list the Atlantic salmon (*Salmo salar*) throughout its historic range in the contiguous U.S. under the ESA. On January 20, 1994, the Services found that the petition presented substantial scientific information indicating that a listing may be warranted (59 FR 3067).

The Services conducted a joint review of the species in January 1995, and found that the available biological information indicated that the species described in the petition, Atlantic salmon throughout its range in the United States, did not meet the definition of ''species'' under the ESA. Therefore, the Services concluded that the petitioned action to list Atlantic salmon throughout its historic United States range was not warranted (60 FR 14410, March 17, 1995). In the same notice, the Services determined that a DPS that consisted of populations in seven rivers (the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers) did warrant listing under the ESA. On September 29, 1995, after reviewing the information in the status review, as well as state and foreign efforts to protect the species, the Services proposed to list the seven rivers DPS as a threatened species under the ESA (60 FR 50530, September 29, 1995). The proposed rule contained a special rule under section 4(d) of the ESA which would have allowed for a State plan, approved by the Services, to define the manner in which certain activities could be conducted without violating the ESA. In response to that special provision in the proposed rule, the Governor of Maine convened a task force which developed a Conservation Plan for Atlantic Salmon in the seven rivers. That Conservation Plan was submitted to the Services in March 1997.

The Services reviewed information submitted from the public, current information on population levels, and assessed the adequacy of the Maine Atlantic Salmon Conservation Plan, and on December 18, 1997, withdrew the proposed rule to list the seven rivers DPS of Atlantic salmon as threatened under the ESA (62 FR 66325). In that withdrawal notice, the Services redefined the species under analysis as the Gulf of Maine DPS to acknowledge the possibility that other populations of Atlantic salmon could be added to the DPS if they were found to be naturally reproducing and to have wild stock characteristics. NMFS maintained the Gulf of Maine DPS as a candidate species to acknowledge ongoing concern over the species' status. In the 1997 withdrawal notice, the Services outlined three circumstances under which the process for listing the Gulf of Maine DPS of Atlantic salmon under the ESA would be reinitiated: (1) An emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed; (2) the biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The Services received the State of Maine 1998 Annual Progress Report on implementation of the Conservation Plan in January 1999. On January 20, 1999, the Services invited comment from the public on the first annual report and other information on protective measures and the status of the species. The comment period remained open until March 8, 1999 (64 FR 3067). The Services reviewed all comments submitted by the public and provided a summary of those, along with their own comments, to the State of Maine in March 1999. The State of Maine responded to the Services' comments on April 13, 1999.

In order to conduct a comprehensive review of the protective measures in place and the status of the species, as was committed to in the 1997 withdrawal notice, the BRT was reconvened to update the January 1995 Status Review for Atlantic salmon. The 1999 Status Review was made available on October 19, 1999 (64 FR 56297). On November 17, 1999, the Services published a proposed rule to list as endangered the Gulf of Maine Atlantic salmon DPS, which includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site northward to the mouth of the St. Croix River at the United States-Canada border. The Services stated that to date they had determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, all in eastern Maine.

The proposed rule invited comment from the public and specifically solicited comments regarding: (1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this DPS; (2) the location of any additional populations of the Gulf of Maine DPS of Atlantic salmon within the DPS range, including, but not limited to, Bond Brook, Togus Stream, Passagassawaukeag River, Kenduskeag Stream, Felts Brook, and the Pennamaquan River; (3) additional information concerning the range, distribution, and population size of the DPS; (4) current or planned activities in the subject area and their possible impacts on this DPS; (5) additional efforts being made to protect naturally reproducing populations of Atlantic salmon; and (6) the relationship of existing hatchery populations to natural populations of the DPS.

**Summary of Comments and Information Received in Response to the Proposed Rule**

We have reviewed all written and oral comments received during the comment period and have incorporated updated data and information into appropriate sections of this rule. We have organized substantive comments concerning the proposed rule into specific issues. We grouped comments of a similar nature or subject matter into a number of broader issues. These issues and our response to each are presented in the subsections below.

The proposed rule announced a comment period to close on February 15, 2000. On January 7, 2000, the Services extended the comment period to March 15, 2000 (65 FR 1082). On March 15, 2000, the Services further extended the comment period to April 14, 2000 (65 FR 13935). During the 150-day public comment period, the Services received over 200 written comments. Three public hearings were held: January 29, 2000, in Machias, Maine; January 31, 2000, in Ellsworth, Maine; and February 1, 2000, in Rockland, Maine (65 FR 1082). Nearly 1,000 individuals attended the three public hearings.

In addition to soliciting and reviewing public comments, the Services must seek peer review of its listing proposals. On July 1, 1994, the Services published a series of policies regarding listings under the ESA, including a policy for peer review of proposed listings (59 FR 34270). In accordance with this policy, on February 9, 2000, the Services requested peer review of the proposed rule. The proposed rule and status review were sent to six reviewers and responses were received from three of these reviewers.

A summary of the peer review comments and the other comments received in response to the proposed rule follows.

*Issue 1: Peer Review*

*Comment 1*: Some commenters voiced objections that the proposed rule and genetic data have not been peer reviewed.

*Response*: The 1995 proposed rule, 1995 status review, 1997 genetics reports, and the November 1999 proposed rule were subjected to international peer reviews. Six scientists outside the Services with no involvement in the status review process were asked to critically review the proposed rule; three responded. The three peer reviewers concluded that the recommendation to list the population as endangered was consistent with the current status of the population and the requirements of the ESA.

One peer reviewer stated that there was insufficient evidence in support of the Gulf of Maine DPS designation but recommended that its conservation status warranted special consideration. That reviewer also stated that because Atlantic salmon have a refined homing instinct with minimal straying, the status of Atlantic salmon populations in Canada will have no bearing on the persistence and recovery of Atlantic salmon in Maine. That reviewer further stated that the absence of irrevocable evidence of genetic and ecological discreteness, as well as significance, is irrelevant in this context.

The second peer reviewer agreed with the overall conclusions of the proposed rule, but pointed out several areas of inconsistencies in the proposed rule. This reviewer raised concern over the fact that Atlantic salmon aquaculture is already well established in the DPS range and expressed concern over the use of weirs to identify the influence of aquaculture-reared fish on the wild salmon. This reviewer cautioned against the use of hatchery stocks for restoration, and advised that a genetic monitoring regime should be implemented for each hatchery stock. Finally, this reviewer recommended a greater discussion of the implications of dams (both natural and artificial) and dam removal on historic and potential life history strategies for Atlantic salmon.

The third peer reviewer supported listing and found the biological information to be well founded and described, and concurred that the population segment is discrete and in danger of extinction. This reviewer cited run timing, size of fish, strong homing instincts, sea age at maturity, and management differences in the United States and Canada as evidence of a DPS. This reviewer expressed concern over the low numbers of adult returns and stated that the heavy loss of smolts on their outward migration suggested a hypothesis related to endocrine disrupting chemicals from chemical spray and other endogenous sources. This reviewer stated that the conclusion that aquaculture practices must be carefully controlled and regulated is justified and cited information from Norway and Scotland as support. This reviewer encouraged further investigation to discover the magnitude and causes of at sea mortality and encouraged consideration of the possible effects of climate change on the Gulf of Maine DPS.

*Comment 2*: Several comments were made that the Federal stocking program should be subjected to an external peer review.

*Response*: The Services supported the premise of a peer review of the salmon hatchery program when it was requested by the State of Maine in January 1999. The Services continued to cooperate with the State of Maine, Trout Unlimited, and the National Fish and Wildlife Foundation in assembling the peer review panel and the scope of the review. This initiative ended in late 1999, when the State of Maine withdrew its support. The Services would again support an external review of the state, Federal, and private hatchery programs in Maine.

*Issue 2: Accuracy and Sufficiency of the Scientific Data*

*Comment 3*: Several commenters stated that there is a lack of data on the actual population size of the DPS and the causes of the stated decline. Comments specifically questioned the exclusion of Penobscot River adult returns from the DPS data and the present existence of any wild salmon populations in the Pleasant and Dennys Rivers. It was suggested that no revision of the earlier 1997 decision as to the status of the DPS should be made until all data are demonstrated to be complete and unequivocal.

*Response*: The numbers reported in the 1999 Status Review and reflected in the proposed rule represent actual fish counts. The Narraguagus River is the only river with relatively complete and accurate population data during the period of population decline. Adult salmon counts on the other DPS rivers are either partial or completely lacking. However, during the review period there were counts of spawning redds in those rivers that provide strong and consistent circumstantial evidence that the decline in adult salmon spawners documented in the Narraguagus River occurred simultaneously in other DPS rivers. The implication of the redd counts is that the entire adult salmon population in the Gulf of Maine DPS numbers in the low hundreds. The number of adults counted annually at the Veazie Trap in the Penobscot River are the direct or indirect product of salmon juveniles stocked from Green Lake and CBNFH as part of the 30-year restoration effort in that river. The Penobscot, with the exception of Cove Brook, which is a tributary to the Penobscot, is not currently considered part of the Gulf of Maine DPS. The return numbers to the Penobscot are of interest because they provide insight into the marine survival of North American stocks.

A partial salmon trapping program and the observation of redds in the Dennys River and occasional observation of wild adult salmon and redds most years in the Pleasant River are adequate indications that a salmon population still exists at some level in those rivers. Because of its proximity to marine cages, the Dennys River is most likely to bear the greatest impact from aquaculture escapees. However, the genetic analyses of individuals taken as juveniles from the Dennys River to be used as broodstock for the CBNFH indicate that these fish are of wild origin. The Pleasant River population is probably the most at risk due to low numbers of adults combined with juvenile fish that escaped from or were discharged from an aquaculture hatchery in the watershed. We do not believe that the failure to observe redds for one year is evidence of extinction. In fact, as of August 2000, three wild adult salmon were reported at the weir site. At any point in time, there are usually 5 or more different generations, or year classes, of a river population in existence. A failure of one spawning year class does not represent extinction. There is also the possibility that redds were present but not observed because of river conditions.

The data for adult salmon returns and for juvenile salmon within rivers in the DPS are not complete, but clearly demonstrate that a serious population decline has occurred over the past 10 to 15 years. The database on redd counts, the thorough documentation of the Narraguagus population trend, the general sea survival trend indicated by hatchery-based populations on the Penobscot, the extensive database on population trends on many Canadian rivers and the abundance estimates of 1SW salmon off the West Greenland feeding grounds maintained by the International Council for the Exploration of the Sea (ICES), all provide evidence of the precarious state of the Gulf of Maine DPS of Atlantic salmon.

*Comment 4*: One commenter complained that the Services failed to provide the raw data that formed the basis of the description of the DPS and the conclusion that the DPS was in danger of extinction.

*Response*: All data used by the Services in the development of the proposed rule was referenced in the *Review of the Status of Anadromous Atlantic Salmon (Salmon salar) Under the United States Endangered Species Act* (July 1999) and has been available through a number of sources. The genetics information used in the Status Review and proposed rule is contained in reports that present analyses of raw genetics data developed by the USGS, and much of it has been available on the internet. The raw data for these genetic reports were requested by the State of Maine and provided by the USGS. Because the USGS had not yet completed compiling the most recent raw genetics data available, there was a delay in responding to a request for these data. The data were provided to the requestor as soon as processing and quality control requirements were completed by the laboratory. These new data were not available for use or consideration in the development of the proposed rule, nor were these data relied upon in the development of the final rule.

*Comment 5*: Some commenters stated that there was no basis in the information available to justify revision of the decision made relative to the 1997 withdrawal.

*Response*: The reasons for the November 17, 1999, proposed listing are specifically described on pages 62636 and 62637 of the published proposed rule. The second paragraph on page 62637 stipulates the factors that are primary sources of concern. Major changes in the status of salmon documented by data available after the 1997 decision and leading up to the 1999 proposed rule relate to new disease and genetic threats, continuing concerns about threats posed by aquaculture escapees, lack of progress in resolving concerns over existing aquaculture practices, low juvenile in-river survival levels, continuing decline in adult returns, and the lack of sufficient progress in dealing with sport fishing (at that time) and water withdrawals.

*Comment 6*: Some commenters stated that there are no data to form a basis for the Services' determination that the population will go extinct rather than recover in response to current recovery activities.

*Response*: The data available from the study of juvenile survival in the Narraguagus River, the discovery of a large number of aquaculture hatchery origin juveniles in the Pleasant River, a new and growing threat of a fatal viral disease, Infectious Salmon Anemia (ISA), the increasing use of European strain salmon by the Maine aquaculture industry, and the extremely low marine survival indicated by data developed by the ICES, were considered in the context of the data and show a continued decline of DPS adult salmon returns. Under such circumstances, the Services have determined that a listing of ''endangered'' is appropriate. A recovery plan will be developed which will contain recovery targets. When those recovery targets are achieved, then the Gulf of Maine DPS may be considered for reclassification.

*Issue 3: Inclusion of Other Rivers*

*Comment 7*: Some commenters questioned why other Atlantic salmon rivers, such as the Penobscot, in the geographic range of the DPS were not included in the proposed rule.

*Response*: Salmon from a given river were excluded from the DPS if information indicated that the fish likely did not substantially represent a wild population that had persisted through time. Information used to make that determination included the existence of a reproducing population that historically had access to natal spawning habitat adequate to have persisted, and the likelihood and extent of introgression with fish from outside the geographic range of the DPS. This latter factor was assessed with a variety of data including stocking history (number of fish, life stages, and source population), return rates of stocked fish, the origin of returning adults (i.e., hatchery vs. wild), and genetic characterization.

Tributaries in the lower portion of the Penobscot River (south of the Bangor dam) were included within the geographic range of the DPS because of their continued historic free access to migrating salmon, as evidenced by the existence of at least one genetically unique, naturally reproducing population. A decision whether to include or exclude fish that inhabit the mainstem of the river or tributaries above Bangor dam has been deferred until further analysis has been completed, including a detailed genetic characterization. Samples have been collected and are currently being analyzed. The Services plan to make a determination as to the appropriateness of adding the mainstem and upper tributaries of the river to the DPS in the year 2001.

*Issue 4: Reason for Observed Genetic Difference*

*Comment 8*: Some commenters questioned whether the genetic differences noted between the fish from the Gulf of Maine DPS and Canadian populations, and among populations in the DPS, could reflect the effects of small population size (e.g., population bottlenecks, genetic drift, founder effects) or introgression of non-native fish, rather than the existence of historical, adaptively important genetic differences.

*Response*: Numerous studies have shown that Atlantic salmon are

naturally substructured into genetically differentiated populations, and that this structure is important to the overall fitness and productivity of the species. Recent analyses indicate that genetic structure exists among the fish in the DPS rivers. Whether this structure reflects the existence of adaptively important traits is subject to varying interpretations, although it should be noted that the different interpretations of the data presented are not mutually exclusive. Small populations can maintain important, genetically based, adaptive traits.

After analysis of all available data, especially in the context of the DPS representing the extreme southern terminus of the present range of wild stocks in North America, the Services concluded that the remaining populations have retained unique, adaptively important genetic traits, the loss of which could preclude recovery of self-sustaining populations. Hence, the Services are concerned with preventing irreversible changes to the genetic integrity of the remaining populations.

Recognizing that there are differences in how the genetic data are interpreted, it should be noted that the genetic differences observed among wild populations within North America are not central to the listing decision. The Gulf of Maine DPS is delineated largely by its unique geographical location and ecological setting relative to other salmon populations.

*Issue 5: Delineation of the Gulf of Maine DPS*

*Comment 9*: Some stated that the proposed DPS appears to have been contoured to coincide with the political need of the Federal restocking program to justify the capital and operational costs of its river-specific breeding program.

*Response*: The rivers comprising the current range of the Gulf of Maine DPS have long held a special designation by the State of Maine. In the July 1984 *Management of Atlantic Salmon in the State of Maine, A Strategic Plan*, the Maine Atlantic Sea-Run Salmon Commission designated seven rivers as ''Category A'', having fishable populations of wild Atlantic salmon. These are seven of the eight rivers that comprise the Gulf of Maine DPS. In 1991, in response to a continuous decline of these wild Atlantic salmon populations, the FWS designated them as Category 2 candidate species under the ESA, developed a prelisting recovery plan in cooperation with the Atlantic Sea-Run Salmon Commission, and initiated a river-specific fish culture program. The DPS designation and river-specific culture program for six of these seven rivers is the product of those events and an ESA Status Review in 1995. Contrary to the premise of the comment, in review of the original petition to list Atlantic salmon throughout the U.S. range, the Services specifically rejected as listable entities several salmon populations that were the focus of five Federal hatcheries representing considerably greater capital and operational costs.

*Issue 6: Effect of Previous Stocking*

*Comment 10*: Some commenters questioned how there could be a river specific genetic strain of fish with 128 years of stocking. Another commenter stated that it appeared that distinct populations of Atlantic salmon in the Ducktrap River and Cove Brook have persisted over time despite the fact that throughout history less than 100,000 fry were stocked in the Ducktrap and no salmon were stocked in Cove Brook.

*Response*: Evidence suggests that stocking success was relatively poor prior to 1971. From 1971 to 1990, most stocking efforts in Maine used smolts rather than earlier life stages with survival much improved over earlier stocking efforts. Starting in 1991, all stocking within the Gulf of Maine DPS has been river-specific in origin.

Recent genetic studies show that unique genetic material exists in the Ducktrap River and Cove Brook. Although local variability is present in these stocks, they appear to be more closely related to other DPS stocks than to either Canadian or European stocks.

Some authors have asserted that the magnitude of past stocking efforts has facilitated introgression and eliminated local variability (Kornfield *et al.*, 1995). While the historic isolation of stocks within the DPS may have been greater and supported higher levels of genetic difference, subtle distinctions between stocks within the DPS remain, and differences relative to populations outside the DPS are clear. The majority of Atlantic salmon stocks used for supplemental stocking within the Gulf of Maine DPS have been from within the DPS geographic range (Baum, 1997). Because the source of most stocking efforts has been from within the DPS, the genetic effects from stock mixing would be substantially less than from stocks from outside the DPS. A comprehensive examination of unstocked and stocked DPS rivers suggests that while past stocking efforts have likely increased gene flow between populations, this gene flow was insufficient to eliminate local variability (King *et al.*, 2000a; King *et al.*, 2000b).

*Comment 11*: Some commenters believed that it is dangerous to label Maine's salmon populations as a DPS since there is no historical baseline from pre-stocking years to compare.

*Response*: There are no known biological samples available for genetic testing prior to 1940 from Atlantic salmon of either northern or southern populations. It is true that having such samples from Atlantic salmon populations prior to stocking would be useful. However, the Services are required to use the best available scientific information upon which to base a determination. The Services believe that acknowledgment and protection of existing genetic diversity is critical to the survival of salmon within the DPS. It is also important to note that the Gulf of Maine DPS is delineated largely by its unique geographical location and ecological setting relative to other populations.

*Issue 7: Relationship between Life History, Morphometric Characteristics, and Genetics*

*Comment 12*: Some commenters questioned the reliance on life history and morphometric characteristics in delineating the DPS, as they did not believe these are genetically based.

*Response*: Life history and morphometric characteristics have been shown to be related to both genetics and environment and their interaction. The proportion of 2SW fish in Maine stocks, age at smoltification, and marine maturation rates of several salmonid species have been shown to be heritable traits.

Differences in life history among U.S. Atlantic salmon stocks and those of Canada were identified as early as 1874 (Atkins, 1874). U.S. Atlantic salmon stocks have been composed of predominantly 2SW salmon (> 80 percent) from at least the late 1800s to the present (Atkins, 1874; Kendall, 1935; and USASAC, 1999). In contrast, many Canadian stocks and several in Europe have a much higher grilse component with a concurrently lower 2SW component that is frequently less than 50 percent (Hutchings and Jones, 1998). This life history trait is partially controlled by stock genetics (Bailey *et al.*, 1980; Naevda, 1983; Glebe and Saunders, 1986; Ritter *et al.*, 1986; Herbinger and Newkirk, 1987; Hutchings and Jones, 1998; Palm and Ryman, 1999). U.S. stocks have a return age composition that differs from Canadian stocks, especially neighboring stocks in the Scotia-Fundy region. It is most probable that these differences are primarily due to genetic make-up. The sex ratios of 1SW salmon differ between

Maine DPS rivers and nearby Canadian rivers. Maine 1SW salmon are predominantly (95 percent) male (Baum, 1997) while those in the Miramichi River, Canada, are only about 75 percent male (Randall, 1985). Genetic control of maturation rates in salmonids is not exclusive to Atlantic salmon (Naevda *et al.*, 1981; Naevda, 1983; Iwamoto *et al.*, 1984; and Burger and Chevassus, 1987).

The migration at sea differs between Maine DPS rivers and Canadian rivers; Maine salmon have been shown to migrate at low percentages to East Greenland while Canadian salmon have not been found there (Baum, 1997), and Maine DPS salmon return to their natal rivers earlier in the year than Canadian salmon (Baum, 1997). Size of adult salmon returning to Maine rivers differs between the Gulf of Maine DPS and the nearby Canadian population segment. Maine 1SW salmon are about 2.5 centimeters (cm) longer than Miramichi River, Canada, salmon, and Maine 3SW salmon are about 6.0 cm longer than those in nearby Canadian rivers (data from Baum, 1997 and Randall, 1985). Furthermore, the egg production of Maine DPS salmon is about 10 to 20 percent greater than that of Saint John River salmon of similar size (data from Baum and Meister, 1971 and Randall, 1985).

Recent analyses of juvenile Atlantic salmon data suggest that while environment has a strong influence upon juvenile growth, smolt age and maturation (precocious parr) (Brannon, 1982), heritable differences between stocks also influence growth and performance (Baily, 1980; Hershberger *et al.*, 1982; Iwamoto *et al.*, 1982, 1984; Saxton *et al.*, 1984; Iwamoto *et al.*, 1986; Kincaid, 1994; and Hutching and Jones, 1998) and ultimately determine the ability of stocks to exploit their native habitat (Metcalfe, 1998). Though many of the distinct life history traits displayed by Maine salmon relative to nearby Canadian stocks have not been experimentally shown to have a genetic basis, it is unlikely that environmental factors alone can account for all of these differences (Baum, 2000). The combination of heritable traits and the unique environment in Maine constrain the scope of adaptation and provide pressures of natural selection that are exhibited in unique life history characteristics.

Taking into account all of the foregoing factors, the Services' BRT determined that differences in life history characteristics historically contributed to the distinctness of the Gulf of Maine DPS. Remnant stocks have maintained the most characteristics of these factors: Smoltification at a mean age of two, different migration patterns and earlier run timing, predominant adult returns as 2SW fish (age four), low proportion of female 1SW fish, longer 1SW and 3SW fish, and greater egg production. Since the proportion of 2SW fish in an Atlantic salmon stock has a documented genetic basis (Naevda, 1983; Glebe and Saunders, 1986; Ritter *et al.*, 1986; Herbinger and Newkirk, 1987; Hutchings and Jones, 1998; and Palm and Ryman, 1999), the BRT concluded that the DPS has unique life history characteristics that have a heritable basis. The BRT also concluded that both environmental and genetic factors make the Gulf of Maine DPS markedly different from other populations of Atlantic salmon in their life history and ecology. The National Academy of Sciences will be conducting a study of Atlantic salmon. Upon evaluation of the final report, the Services will take appropriate action, if any.

*Issue 8: Separateness of the DPS*

*Comment 13*: Some commenters questioned whether adequate data existed to support the contention that the Gulf of Maine DPS is separate from other U.S. stocks of Atlantic salmon.

*Response*: Defined zoogeographical regions in New England separate the Gulf of Maine DPS from populations in most of the other New England rivers. Although biological data are lacking for these extirpated stocks, it is likely that populations were distinct because of differences in selective pressures in each region.

*Issue 9: Reproductive Isolation*

*Comment 14*: Some commenters questioned how the Gulf of Maine DPS could be reproductively isolated when substantial numbers of females per generation migrate between the DPS rivers and the Penobscot River.

*Response*: Migration rates between rivers are not large. Tagging studies have shown that hatchery fish (which tend to have higher straying rates than wild fish) stocked into Maine rivers exhibited a straying rate of one to two percent. In Norway, populations are considered discrete despite straying rates of five to eight percent. Additionally, studies show that although mixing of stocks has occurred, genetic differences between stocks exist.

*Issue 10: Historic Distribution and Abundance of Atlantic Salmon in North America*

*Comment 15*: Some commenters cited studies which suggest that Atlantic salmon did not occur in North America before or during the last glacial period (approximately 70,000 to 10,000 years ago) and the limited documentation of these populations prior to the 1800's combined with sporadic records during the first half of this century raises questions regarding their historic abundance. In addition, some commenters questioned the reliance in the Status Review on four or five biological surveys taken in intervals of about 20 to 25 years. Since there were significant stocking efforts in between these time periods, they stated that fish documented in these surveys (once every 20 years or so) are not necessarily from native or wild populations.

*Response*: Anadromous Atlantic salmon were native to nearly every major coastal river north of the Hudson River (Atkins, 1874; Kendall, 1935). Genetic differentiation between North American and European stocks (Taggart *et al.*, 1995) supports the assumption that Atlantic salmon were present in North America before the last glacial period and that they persisted over time (Behnke, 1996). However, populations may have migrated southward for a time while their northern range was covered with glacial ice (Behnke, 1996). Claims that Atlantic salmon did not exist in New England before or during the last glacial period or before 1500 are based on the fact that no salmon bones have ever been found in excavated regions of the area (Carlsson, 1993). These explanations do not take into account the acidity of the soil in Maine and surrounding regions which may have naturally destroyed the delicate bones over time (Behnke, 1996), or that genetics data suggest differentiation about 8,000 to 10,000 years ago. Based on the best available data, there were likely at least 11 U.S. coastal watersheds outside of Maine that historically supported wild salmon populations. Beland (1984) reported that at least 34 Maine Rivers held Atlantic salmon populations at one time. Other sources report the number to be 28 (MacCrimmon and Gots, 1979; Kendall, 1935).

*Issue 11: Importance of Genetics*

*Comment 16*: Some commenters questioned that if genetic differences were that important, then how could Atlantic salmon from the Penobscot River be used to successfully establish runs of wild salmon in the Connecticut River? Additionally, they questioned if multiple populations established from a donor population would differentiate into genetically distinct populations in 20 generations.

*Response*: The loss of naturally reproducing fish in the Connecticut and Merrimack River drainages represented

nearly 40 percent of historic U.S. Atlantic salmon juvenile production habitat. The loss of habitat in these two southernmost rivers and their indigenous Atlantic salmon populations certainly had an influence on the genetic diversity of this species in the United States and North America. These rivers are currently the focus of restoration efforts using nonindigenous stocks mostly of Penobscot River origin. Return rates from stocking in the Connecticut and Merrimack Rivers have been poor relative to other North American stocks (Saunders, 1981; Friedland *et al.*, 1993). These low return rates appear to be attributable to the loss of local adaptations to unique habitat characteristics associated with the extirpated stocks (Jones, 1978; Lindell, 1987; Saunders, 1981). Additional research supports this hypothesis and indicates that when stocks are transferred to new river systems, those from nearby rivers typically exhibit higher return rates than stocks from rivers farther away (Ritter, 1975; Reisenbichler and McIntyre, 1977; Riddell *et al.*, 1981; Ritter *et al.*, 1986; and Hopley, 1989). Additionally, stock specific differences in susceptibility to bacterial and viral diseases underscore the importance of genetic variability not only to the viability of local stocks but as a genetic resource for conservation, restoration, and commercial aquaculture applications (Gjedrem and Gjoen, 1995). The loss of locally adapted stocks has made restoration more difficult in southern New England. Fortunately, some salmonids have shown evidence of plasticity when introduced to new environments, and locally adapted and genetically differentiated stocks have developed in less than 20 generations (MacCrimmon and Marshall, 1968; MacCrimmon *et al.*, 1970; MacCrimmon, 1971; and Krueger *et al.*, 1994). Reintroduction and range-expansion programs use this plasticity to create viable populations, but typically success rates are highest with neighboring stocks or those from similar ecosystems (Reisenbichler and McIntyre, 1977; Krueger *et al.*, 1981; and Reisenbichler and Rubin, 1999). As these restoration programs continue, their focus on the redevelopment of river-specific stocks should enhance the genetic resources of Atlantic salmon in the United States.

*Issue 12: The Role of the River Specific Stocking Program in Recovery*

*Comment 17*: Some commenters questioned the appropriateness and success of the FWS river specific stocking program.

*Response*: The Atlantic salmon rehabilitation program is a cooperative program involving numerous State and Federal agencies, as well as non-governmental organizations. There has been a considerable amount of review, oversight, and guidance on every aspect of this program (fish culture, health, genetics, management, and habitat evaluation) since its inception in 1991. The Maine Atlantic Salmon Technical Advisory Committee (TAC) reviews program activities and makes recommendations to the Atlantic Salmon Commission (ASC), and the Services for final decisions. Also, the USASAC provides guidance to program cooperators.

The Services supported the suggestion for a peer review of the river specific stocking program when it was proposed in January 1999, by the State of Maine, Trout Unlimited, and National Fish & Wildlife Foundation. This initiative was dropped when the State of Maine withdrew its support in the fall of 1999. The role of the river specific program will be examined during the development of the recovery plan.

*Comment 18*: Some commenters voiced concern about the restoration program and the potential disastrous failure of that program in terms of interbreeding, adapting the fish to freshwater, and misplacing wild fry in habitat.

*Response*: Although the above mentioned aspects of the stocking program are discussed and reviewed continually among program cooperators, the discussion in the Status Review did not address many of the concerns presented during the public comment period. These issues will be discussed much more comprehensively during the development of the recovery plan.

The level of genetic diversity in Maine Atlantic salmon populations is very similar to the level found in Canada. The level of genetic diversity found in fish within the DPS is similar to the level of genetic diversity found in other North American populations, which indicates that the genetic diversity and variation have not been diminished by the river specific fish culture program. All precautions are being taken by cooperators in broodstock collections, management and spawning protocols to ensure that this genetic integrity is maintained. Monitoring of the river-specific Atlantic salmon broodstock at CBNFH show that the heterozygosity of the rivers has not been compromised and is sufficiently robust to maintain a viable population at this time. Continuous monitoring protocols are in place to ensure that genetic integrity is maintained.

While it is true that the captive broodstock at CBNFH have not seen a marine phase, many years of adult returns from the hatchery-produced progeny of hatchery-reared broodstock indicate that this should not affect the ability of the offspring to undergo smoltification and emigrate to the ocean after the normal 2-year in-river juvenile phase.

Habitat in the rivers in the DPS has been mapped during low summer flows by Maine ASC and FWS biologists. Efforts are made during stocking to target areas which have been identified as good fry habitat. Fry stocking is usually suspended during periods of higher than normal flows to prevent stocked fry from being washed out of the target stocking areas.

*Comment 19*: Some commenters cited poor returns in 1997, 1998, and 1999 as evidence of failure of the river-specific stocking program.

*Response*: The life history of the Atlantic salmon is complex. Survival at all life stages is dependent upon many biological and physical factors in the freshwater and marine environments. The goal of the river-specific stocking program is to ensure that the freshwater rearing habitat is optimally used by genetically suitable stocks for the purpose of producing out-migrating smolts in spite of low returning adult populations. The goal is to maintain a population until those factors which are negatively affecting populations are lessened through naturally occurring forces and/or human intervention.

Hatchery program evaluations indicate that the hatchery program, through both fry and broodstock releases, has increased the juvenile population beyond what the low number of returning adults would provide.

It has taken several years to develop captive broodstock from parr collection in numbers sufficient to optimally use the rearing habitat. This level of use has been approached only within the last 4 or 5 years. The adult returns to DPS rivers in recent years reflect releases of relatively small numbers of fry. It is premature to make any statements regarding the success or failure of the stocking program's contribution to adult returns since it takes four years to grow from a fry to adult salmon. Significant adult returns from significant numbers of stocked fry should begin to appear in 2001.

The Services will continue to monitor the success of the hatchery program and continue to explore ways to improve hatchery releases, especially in light of the newly redesigned CBNFH isolation facility. For example, the current

program was recently revised to sample and track the DNA from individuals which comprise a mating pair. This allows the tracking of stocked fry and better assessment, monitoring, and management of the fish culture program.

The best scientific principle, which is accepted world-wide, dictates that the best source to use to rebuild a fish or wildlife population is that same population. If this population does not exist, then the next best population to use is one that is nearby and similar biologically. The remnant populations of six of the eight rivers within the Gulf of Maine DPS range are being used to maintain and rebuild these salmon populations.

Comprehensive DNA fingerprinting of each salmon broodstock for the DPS rivers indicates that the level of genetic diversity and variation are similar to other North American populations. This indicates that the river-specific program has not diminished the genetic integrity of these populations. All precautions are being taken by program cooperators in broodstock collections, management, and spawning protocols to ensure that this integrity is maintained. Continuous monitoring of the river-specific Atlantic salmon broodstock at CBNFH shows that the hetereozygosity of the rivers has not been compromised and is sufficiently robust to maintain a viable population.

The goal of the Atlantic salmon rehabilitation program is to maintain a juvenile population of genetically compatible salmon while optimizing the use of rearing habitat to produce out-migrating smolts until the adult population recovers adequately to meet natural reproduction requirements. Monitoring studies have shown that juvenile populations in areas which have been stocked with fry are higher than would be expected from the observed levels of natural reproduction. The hatchery program also provides refugia for salmon populations which are at low levels and in danger of ceasing to exist, as is the case with the Gulf of Maine DPS salmon populations. The stocking program has been successful in these aspects of the program. Continued monitoring of the river-specific stocking program will be conducted to evaluate its impact on the recovery of the Gulf of Maine DPS. Modifications based upon the results of the monitoring will be made as necessary.

*Comment 20*: One commenter suggested that the Services should work with the new ASC and direct the hatcheries to return all river-specific fish they have in the holding tanks to their specific rivers—return all to their home rivers, remove all weirs and allow the fish to move naturally.

*Response*: Returning all hatchery broodstocks to the rivers of origin is an option that could be posed to the ASC for discussion within the Commission, and with other involved state and Federal agencies, and the interested public for consideration.

The Services believe, however, that this action, under current environmental conditions, would pose an unacceptable risk to the small remnant populations in the Gulf of Maine DPS for several reasons. The hatchery system serves two functions. It provides a refuge for those remnant salmon populations which are in danger of extinction, as well as increasing the probability of rebuilding these populations, because survival at all lifestages in the hatchery is much greater than in the wild. This affords an opportunity to protect and maintain these populations until environmental conditions become more favorable to the survival of the salmon through natural cycles, and as a result of habitat protection and enhancement being conducted by agencies and watershed councils.

Broodstock that are surplus to the needs of the hatchery are returned to their river of origin. In 1996, 503 adult fish were returned to their rivers, 583 in 1997, 907 in 1998, and 81 in 1999.

*Comment 21*: One commenter claimed that the river specific stocking program has no biological basis at this time due to low population sizes.

*Response*: The benefits and risks of a river-specific rehabilitation program must be considered in the context of population dynamics, especially population size, which can cause (1) inbreeding depression, (2) loss of genetic variation, and (3) outbreeding depression. If populations become small, the risk of inbreeding depression and loss of genetic variation increases. In response to this, one management option is the introduction of fish from outside the population; however, hazards such as outbreeding depression are associated with this option.

For the salmon in question, each population is comprised of multiple year classes of wild and captive fish. The effective population size is hence much larger than the number of returning adults in any given year. Nonetheless, if effective population size becomes low, or if genetic data indicate a loss of variation within a population, then it would be appropriate to consider modification of the river-specific protocols for a given population. DNA fingerprinting of broodstock indicates that the levels of genetic diversity within the broodstocks from the DPS rivers are similar to other wild populations in other countries. In addition, many precautions are being taken by program cooperators in broodstock collections, management, and spawning protocols to ensure that genetic integrity is maintained.

*Comment 22*: Some commenters stated that the existing stocking program is clearly not working, and suggested that the Services invite the watershed councils and sporting clubs to help redesign that program. They suggested that the current program be replaced with a new river-by-river stocking program with oversight groups that are composed of at least 50 percent local citizens.

*Response*: The current rehabilitation program is a river-by-river program using remnant populations to rebuild the salmon populations. The redesign and reconstruction of the CBNFH has allowed cooperators to develop broodstocks for six of the eight DPS rivers, with no plans being made to develop broodstock for the Ducktrap River and Cove Brook.

The watershed councils participate in the current program and are invited to provide input through Project SHARE (Salmon Habitat and River Enhancement), watershed council meetings, and meetings of the Downeast River Coalition, as well as informal discussions with the agencies. Watershed Councils are also encouraged to participate in meetings of the Maine TAC and ASC, and are actively participating in stocking and fish culture activities. This is an evolving process, and it is anticipated that the agencies and watershed councils will work more closely together as time goes on. For example, the Downeast River Coalition and various fishery agencies have cooperated in developing the Pleasant River Broodstock Management Plan. Additional opportunities for involvement will be available during the recovery planning process.

*Issue 13: Fish Health*

Several comments were received on the relative risk to the DPS from fish diseases. These comments raised questions of three types: (1) Questions regarding the risk posed by aquaculture fish, specifically concerning ISA; (2) questions regarding the need to destroy the Pleasant River broodstock; and (3) questions regarding why Federal hatcheries are not held to the same fish health standards as private fish culture facilities.

*Comment 23*: Some commenters stated that there is no basis to presume that aquaculture fish pose a special

threat to wild salmon in Maine since (a) ISA has existed in Canada for 3 years without appearing in any U.S. fish, (b) there is no scientific documentation of aquaculture fish transmitting disease to wild fish, and (c) the disease already exists in the wild.

*Response*: The Services recognize that disease is a natural part of wild salmon's existence as fish pathogens are a normal part of the aquatic environment. However, the concern raised in the proposed rule relates primarily to the recent occurrence of two disease organisms that were previously unknown in the DPS's geographic area. One is the SSSV recently discovered in Pleasant River broodstock (see Response 13b).

The second is the occurrence of the ISA virus in Canadian aquaculture pens, some within the known infective range of U.S. sea pens. The ISA virus is extremely destructive to maturing salmon and there is no known cure. This virus has only been known to cause disease in situations where fish were artificially confined and was not observed in the carrier state in free ranging salmon or other species until very recently. The ISA virus has been found in wild salmon in Scotland, as well as in confined rainbow trout, wild sea trout, and eels. There is a possibility that the virus can be spread to confined populations (e.g. sea pens) by wild fish of other species, but that has not yet been demonstrated. It is known that it is transmissible laterally between fish pens within 5 kilometers (km) of each other, and by the discharge of slaughter wastes. ISA disease has, to date, only been found in wild fish that have been exposed to infected aquaculture fish in New Brunswick, Canada. There are Canadian aquaculture sites with recent ISA infections close enough to U.S. aquaculture sites in Cobscook Bay, the location of Maine's greatest concentration of salmon aquaculture pens, to create a significant risk of the introduction of the virus to U.S. aquaculture stocks. The extensive testing and precautions that have been taken by the Maine aquaculture industry and the State in response to this situation underscore this risk. A significant portion of the adult DPS salmon must swim near U.S. pens in Cobscook Bay and the vicinity of the Machias Rivers. The possible establishment of ISA in and around U.S. pen sites, and its presence in nearby Canadian aquaculture sites pose a risk to wild salmon. This may have severe consequences and was not known to exist during the 1995 Status Review. The Services recognize that fish pathogens exist in the wild, and aquaculture operations or any other artificially created concentration of fish do not in themselves create pathogens or disease. However, the effect of concentrations of individuals on magnifying the level of any pathogen present and the rate and extent of any resultant epizootic is well known (Finlay and Falkow, 1989). Therefore, the Services concluded that the presence of the ISA virus in the geographic range of the DPS, and the existence of extensive concentrations of net pens create a new and significant risk directly to the DPS adults and indirectly to the rehabilitation program currently supplementing the DPS juvenile population.

*Comment 24*: One commenter questioned the decision to destroy the Pleasant River broodstock.

*Response*: State and Federal agencies responsible for producing fish for release in the wild maintain extensive fish health management programs designed to protect the fish being produced for the public, the facilities used to produce them, and most importantly, the public health and health of other wild fish populations and their environment. Procedures to be followed by an agency when a fish disease situation develops are documented through guidelines and policies (e.g. Fish and Wildlife Service National Fish Health Policy and Guidelines, New England Salmonid Health Guidelines, and various state regulations) which are generally based on procedures described in the so-called ''Blue Book'' produced by the American Fisheries Society. In general, the most stringent counteractions to a disease outbreak in a hatchery are called for when the disease agent is a newly discovered pathogen or one that had not previously been found in the affected geographic area. This was the case with the disease that attacked the Pleasant River wild broodstock being held in captivity at the North Attleboro National Fish Hatchery (NANFH). A retrovirus named SSSV and believed to be the cause of fatal symptoms that developed in the sub-adult Pleasant River broodstock, represented a previously unknown salmon disease. The extent of the threat posed to salmon was not known but, under conditions that existed at the NANFH, the disease was fatal and had no known treatment. The Massachusetts Fish and Wildlife Department, in accordance with customary procedures with an exotic disease, required the FWS to remove these fish from the hatchery which discharges its water into state public waters. The surviving fish were placed in quarantine facilities available at the USGS laboratory in West Virginia so that research could be conducted before destroying and disposing of these infected fish. Subsequent testing of a related group of Pleasant River broodstock held at a private facility in Maine showed these fish also carried the virus, though there were no disease symptoms. These fish had to be removed in order to protect the viability of the facility as a commercial hatchery. No suitable quarantine facilities existed that could safely hold the fish, thus necessitating their destruction. Even if quarantine facilities could have been found and the fish never developed symptoms, their usefulness as broodstock was compromised. Since the virus may be transmissible from an infected parent to the eggs it produced, and given the exotic nature of the virus, any juvenile salmon produced from those infected fish could represent a serious threat to wild and aquaculture fish, and could not prudently be released into the wild.

In the spring of 2000, program cooperators initiated a second attempt to preserve and rebuild the Pleasant River salmon population. This was made possible by the reconstruction of CBNFH and the addition of one isolation bay. A trap on the Pleasant River at Columbia Falls captured outmigrating Atlantic salmon smolts to help enumerate the population and to determine origin (wild or aquaculture). A total of 37 smolts and 24 age 2 parr were brought into CBNFH for holding until they become mature broodstock. Subsequently, 52 age 1+ parr were captured during the summer of 2000 to augment these earlier smolt and parr collections.

In the past year, the FWS and the State of Maine have developed procedures to manage broodstock from populations that contain the SSSV. Newly captured wild broodstock are held in isolation for testing. Any carriers of the virus are culled from the broodstock population in the hatchery prior to spawning, and fry are tested for the presence of the virus prior to release. In 1999, the FWS, in cooperation with the Maine Fish Health Technical Committee, developed a ''Best Management Plan for SSSV'' for the CBNFH. All broodstock which previously tested positive for SSSV were removed from the spawning population and not used in the 1999 spawning season.

*Comment 25*: Federal hatcheries are not held to the same fish health standards as private fish culture facilities.

*Response*: As a matter of national policy, a national fish hatchery abides

by the fish health regulations of the state in which it is located or the state to which fish are shipped. Further, national fish hatcheries abide by the FWS's Fish Health Policy and Guidelines and, in New England, the New England Salmonid Health Guidelines in cases where those requirements are more stringent than the prevailing state requirements. In special situations dealing with imperiled fishes, the Service and the appropriate state agency may develop special procedures, especially relative to disease testing and monitoring, if general practices are not possible for rare stocks.

*Issue 14: Fish Stocking Policies in DPS Rivers*

*Comment 26*: Comments were received that questioned how the listing would deal with the current stocking policies in the DPS rivers. Brook and brown trout have been stocked in some of the DPS rivers and landlocked salmon are known to populate headwater lakes of DPS rivers. Concern was raised regarding the potential for interbreeding, competition, and agonistic behavior among and between species.

*Response*: As noted in the *Review of the Status of Atlantic Salmon (Salmo salar) under the U.S. Endangered Species Act* (1999), interactions between wild Atlantic salmon and other salmonids are mostly limited to interactions with brook trout and brown trout. Competition between species likely plays an important regulatory role and may cause Atlantic salmon, brook and brown trout populations to fluctuate on an annual basis. However, it is difficult to draw conclusions regarding the effects and magnitude of interspecific competition or (in the case of landlocked salmon) the extent of interbreeding.

The Maine Department of Inland Fish and Wildlife recently began an evaluation to better understand the interactions between Atlantic salmon and other freshwater fishes. A draft report entitled ''Potential Interactions Between Atlantic Salmon and Freshwater Fishes'' has been completed with specific emphasis on DPS rivers. The report is now being routed through administrative channels with a copy to the ASC for review.

Results of the draft evaluation suggest that areas that require additional evaluation or scrutiny include the Sheepscot River where natural reproduction of brown trout is known to occur. Brown trout were once stocked in the watershed. While they are no longer intentionally released in the river, wild populations will continue to be monitored in future years. Both landlocked and sea-run salmon are known to spawn at the outlet of Meddybemps Lake, the headwaters of the Dennys River watershed. Management measures that will include screens at the outlet of the lake may minimize interactions by limiting the introduction of landlocked salmon to the river. A proposal to rear brown and rainbow trout, as well as a brook trout/char crosses in an aquaculture venture in the Sheepscot River estuary has been approved by the U.S. Army Corps of Engineers (ACOE). Also, surveys have documented a resident population of largemouth bass in the Ducktrap River. This species was released in the watershed in the 1960's, and currently there is no viable way to control the population. It is anticipated that the fishery resource agencies will continue to assess and evaluate the potential for impacts to sea-run Atlantic salmon resulting from interactions with other fish species. Where feasible and appropriate, measures will be implemented to avoid and minimize adverse impacts to salmon.

*Issue 15: Bycatch of Atlantic Salmon in Commercial Fisheries*

*Comment 27*: Four comments were received concerning the issue of a listing and its potential adverse effect on other commercial fisheries. Specifically there was concern that listing would immediately result in a closure of elver fishing and consequently limit jobs.

*Response*: Juvenile eels, or elvers, begin to migrate into Gulf of Maine watersheds in March with peak migrations occurring in April and May. Extended migrations sometimes continue into June and July. The elver migration and fishery occurs coincident with the emigration of Atlantic salmon smolts. The elver fishery may extend into June, coincident with immigration of adult salmon destined for upriver spawning areas. Regulations of the elver fishery include a season from March 22 to May 31, ban on harvest of elvers upriver of the head-of-tide, limits on the length of fyke nets that can be set in waterways, prohibition on nets from the middle third of any waterway, and a requirement for finfish excluder panels integral with nets to minimize bycatch and mitigate adverse impacts on non-target species. Most nets are deployed near head-of-tide and immediately adjacent to the shore. Entry into the elver fishery was limited in 1999 to reduce harvest, and in 2000, a lottery was introduced for license acquisition. American eels are managed by an interstate fishery management plan under the Atlantic States Marine Fisheries Commission. As long as the member states are in compliance with the fishery management plan, there will be no closures or changes in the state program.

Elvers are often evenly distributed throughout the water column when moving upriver on the flood tide but near head-of-tide they are found along the shore. Maine Department of Marine Resources (DMR) biological staff in recent years have not observed or documented incidental bycatch of either juvenile or adult Atlantic salmon in elver nets. Fish species that have been captured in small numbers include smelt, pollock, stickleback, pipefish, and mummichog. Fishing effort for elvers has decreased in the last 3 years because of restricted license issuance and the fact that market price has decreased considerably. It is not likely that there will be fishery closures or loss of jobs in this fishery, nor a significant decrease in license issuance when the Gulf of Maine DPS of Atlantic salmon is listed as an endangered species.

*Issue 16: Poaching*

*Comment 28*: Some commenters were concerned that a reduction of recreational angler presence on DPS rivers would increase poaching.

*Response*: Measures continue to be implemented by resource agencies to minimize and eliminate the illegal take of salmon on DPS and other salmon rivers in the State of Maine. Funds were made available through grants to support two State seasonal enforcement staff on DPS rivers in years 1998 and 1999, and residual grant funds have been used to purchase surveillance equipment in the year 2000. While funding for enhanced fishery enforcement efforts on DPS rivers diminished in 2000, resource agency personnel are keenly aware of the need to advise recreational anglers and the public that protection of Atlantic salmon is a high priority. The DMR is posting signs on salmon rivers that advise of the presence of salmon and the need for their protection. In addition, the DMR has employed a seasonal Marine Patrol Officer to promote and enforce recreational fishing regulations.

While all waters in the State of Maine are closed to angling for sea-run salmon, other protective measures are also being implemented on an as-needed basis. In late June 2000, a reach of the Penobscot River immediately downstream from the Veazie Dam was closed to all angling to eliminate the accidental capture of salmon. The ban on fishing was needed because striped bass anglers were catching salmon in that area. This reach

of river downstream of the dam is a location where both salmon and striped bass congregate. The reported bycatch of salmon by anglers fishing for American shad on the Narraguagus River prompted an increase in enforcement personnel presence on the river during spring 2000. In addition, resource personnel involved in scientific studies on the Narraguagus River have kept enforcement staff advised of angler activity and have continued to advise anglers and the public of the need to protect all life stages of salmon.

A unique initiative involving the release of mature salmon in the Dennys River and the Machias River estuary in fall 2000, is expected to foster cooperation among anglers and residents of these watersheds for the protection of salmon. This cooperative venture involving the aquaculture industry and fishery resource agencies will place a full complement of adult salmon on the spawning grounds in the Dennys River and adult fish in the lower Machias River. Interest in this initiative is high among stakeholders, and it is anticipated that this interest will offer increased protection for salmon in the watersheds. This program will be evaluated to determine the utility of this approach in a recovery effort.

*Issue 17: Aquaculture*

*Comment 29*: The concern has been raised that fish being used in aquaculture have not been removed from the wild for a sufficient amount of time to become genetically distinct from wild stocks. As a result, these fish should not pose a threat to wild resident populations should they escape from captivity.

*Response*: A large percentage of the fish being used in aquaculture currently are of European origin and, therefore, are genetically different from the native North American strains. North American strains used by the industry are genetically different from wild North American strain due to changes introduced through domestication. The industry selects fish best suited to grow in captivity, which would likely select for different traits and characteristics than those most suited for survival in the wild.

*Comment 30*: One commenter suggested that farm raised fish should be introduced into the rivers to allow fishing for everybody and improve the economy.

*Response*: The goal of the Maine Atlantic salmon rehabilitation program is to enhance and protect the eight remnant populations of Atlantic salmon in the rivers which comprise the Gulf of Maine DPS. The Services are using river-specific remnant populations and rebuilding them to the spawning escapement level needed to sustain the population. This is to achieve both human and environmental benefits, so that people will be able to fish for these salmon in the future, as they have done in the past.

Farm fish releases for sport fishing are inappropriate, particularly at a time when the salmon runs are so endangered. Recovery of wild runs and permanent habitat protection are the objectives of conservation for the Gulf of Maine DPS. Sport fishing can be considered once the other objectives are attained.

*Comment 31*: One commenter questioned the decision not to stock some river-specific fish from aquaculture facilities into the rivers due to fish health concerns.

*Response*: River-specific Atlantic salmon being raised by the aquaculture industry in net pens located in Machias Bay will be released into appropriate rivers after passing a comprehensive fish health survey. These releases are part of an evaluation program being overseen by the TAC to rebuild the salmon populations in these rivers, evaluate the impacts of these releases on juvenile populations, and set a direction for future cooperative programs with the aquaculture industry. The TAC is created by a Cooperative Agreement and is composed of state and Federal representatives who advise the Federal and state resource agencies on any technical matters relative to the Atlantic salmon restoration and rehabilitation programs in Maine.

The river-specific fish held in Cobscook Bay will not be released based on the recommendation of the Maine Fish Health Technical Committee. This recommendation was made as a result of the risk of spreading ISA to wild salmon populations and aquaculture facilities in the United States. This ''quarantine'' procedure is consistent with protocols adopted in Canada to prevent the spread of this virus in an effort to protect both the wild and aquaculture stocks of Atlantic salmon. ISA is already present in the Canadian side of Cobscook Bay.

*Comment 32*: Some commenters questioned the evidence regarding numbers of escapees in rivers or actual impact on wild stocks in Maine from aquaculture, including any impacts from the use of European stocks.

*Response*: Since the aquaculture industry began in the Canadian Maritime Provinces in 1979, escapees from sea pens and hatcheries have been documented in 14 rivers in New Brunswick and Nova Scotia, Canada. The Magaguadavic River is the only river in the Maine/Maritime area that has been monitored closely for interactions between wild and farmed fish. That monitoring began in 1992. Adult salmon of farmed origin have outnumbered wild salmon in that river since 1994 and exceeded 80 percent for three of the five years between 1994 and 1998. Analysis of eggs taken from the Magaguadavic River in 1993 revealed that at least 20 percent of the redds were constructed by females of farm or cultured origin, and another 35 percent were of possible cultured origin (Carr *et al.*, 1997). In addition, emigrating smolts in 1996 were 51 to 67 percent farm-origin and those exiting the river in 1998 were 82 percent farm-origin and cited as evidence of leakage of juveniles from aquaculture facilities on the watershed (Canadian Department of Fisheries and Oceans (DFO), 1999).

The U.S. aquaculture industry is newer and smaller than the Canadian industry, but has been growing rapidly. Occurrences of adult escapees in Maine Rivers are increasing commensurately. Maine production increased from less than 500,000 smolt stocked and 2,000 metric tons produced annually before 1990 to over four million smolt stocked and up to 15,000 metric tons (mt) produced annually by 1998. There is a standing crop of about six million sub-adult salmon in pens in eastern Maine (Baum, 2000). Since documented escapees in Maine rivers were listed through 1997 in the 1999 Status Review, Baum (2000) has provided documentation of 143 more adult escapees observed for the St. Croix, Dennys, Narraguagus, and Union Rivers for 1997–1999. Though the St. Croix and Union Rivers are not DPS rivers, they serve to demonstrate the relation between increasing numbers of salmon in net pens and the increasing occurrence of escapees in nearby rivers. In evaluating the extent of escapes, it must be remembered that these are observed escapees and represent only a portion of actual escapees.

Intensive studies of genetic interaction between wild salmon and aquaculture escapees in Northwest Ireland rivers have clearly demonstrated that escaped juvenile salmon have completed their entire life cycle in the wild, including accurate homing to natal rivers and interbreeding with wild salmon (Clifford *et al.*, 1998). It has been demonstrated that escapees are present in some of the DPS rivers, and many have been observed to be sexually mature (Baum, 2000). There is recent observation of circumstantial evidence of a female aquaculture escapee successfully spawning in the Dennys River (personal communication, Ed

Baum, 1996). Genetic studies (King *et al.*, 1999) have shown the rare occurrence in wild (DPS) fish collected in Maine of alleles that are common in European stocks. This strongly suggests that some level of introgression of European alleles may have already occurred. The experiences from rivers in Canada (DFO, 1999), Ireland (Clifford *et al.*, 1998), and Norway (Fleming *et al.*, 2000 ), which are very similar to Maine salmon rivers, and where aquaculture has a longer history and a greater level of investigation, provide substantial evidence that negative impacts to the DPS can be reasonably anticipated to occur in Maine.

*Comment 33*: Some commenters stated that the voluntary Code of Containment combined with weirs on some rivers provide adequate protection of wild stocks from escapees without any further steps needed.

*Response*: There were no data collected for the Dennys, Pleasant, Machias, East Machias, Ducktrap, or Sheepscot rivers for sea pen escapees during the last three years. Where data are available (Baum, 2000), there is a clear trend towards increasing numbers of escapees from cages entering nearby Maine rivers commensurate with the rapid expansion of aquaculture in eastern Maine. This increase is occurring in spite of most Maine sea pens currently implementing the voluntary industry Code of Containment standards.

*Comment 34*: One commenter suggested that a 1– percent pen escape rate (based on Norwegian data) and a 1– percent survival to the river (basis of commenter's estimate uncertain) would result in 600 escapees in the eastern Maine rivers (with a standing crop of six million). As the great bulk of salmon are raised near the estuaries of the Dennys and the two Machias Rivers, the commenter supposed that annual escape to those rivers would outnumber the estimated DPS populations in those rivers by several fold. Among these rivers, a weir is present only on the Dennys. Trapping facilities and a weir are planned for the Machias/East Machias respectively, but the date and financing are undetermined. It is also important to note that weirs are seasonal structures and, therefore, do not trap fish on a year-round basis. Fish barriers can reduce the degree of threat from a relatively large number of escapees, but cannot be considered as adequate protection for the DPS.

*Response*: Recent evidence of juvenile escapees from an aquaculture hatchery emigrating as smolts from the Pleasant River (Baum, 2000) represent a threat that Codes of Containment for sea pens and weirs entirely fail to address. A commercial hatchery is also located on the East Machias River.

*Issue 18: Marine Survival*

*Comment 35*: Some commenters questioned why the Services consider Maine salmon populations to be on the verge of extinction instead of simply attributing the decline to population cycles.

*Response*: Although population dynamics of Atlantic salmon are intimately related to and influenced by environmental variables, threats caused by man exacerbate the severity of the situation. These threats are serious enough to make a difference between survival and extinction. It is important to note that Atlantic salmon populations continue to decline even with recent increases in favorable marine environmental variables.

*Issue 19: Climate Change*

*Comment 36*: Some commenters cited accounts of temperature rises of one to three degrees Celsius since the 1920s and 1930s, and questioned whether the remaining wild Atlantic salmon of the Gulf of Maine DPS will be able to survive such climatic variability.

*Response*: An examination of the effect of warming climate on fishery resources illustrates the challenges to fish on the southern end of their range. Climate models predict significant warming over the next century as the carbon dioxide content of the atmosphere increases. Records show that there have been periods of warming and cooling of the North Atlantic Ocean, but changes have not been uniform over all areas.

Global warming can have an effect on sea temperatures, wind currents, fresh water input, and mixing of the ocean's surface layer. Fish, being poikilotherms, maintain a body temperature almost identical to their surrounding environment. Thermal changes of just a few degrees Celsius can critically affect biological functions in salmonids such as protein metabolism (McCarthy and Houlihan, 1997; Somero and Hofmann, 1997; and Reid *et al.*, 1998), response to aquatic contaminants (Reid *et al.*, 1997), reproductive performance (Van Der Kraak and Pankhurst, 1997), smolt development (McCormick *et al.*, 1997), species distribution limits (McCarthy and Houlihan, 1997; Keleher and Rahel, 1996; and Welch *et al.*, 1998), and community structure of fish populations.

It has been suggested that an overall increase in river water temperatures due to global warming may actually benefit certain fish populations due to greater growth opportunity. Increased opportunities for growth in the spring and summer could increase the percentage of fish that enter the upper size distribution of a population and smolt the following spring (Thorpe, 1977; Thorpe *et al.*, 1980; and Thorpe, 1994). In addition, warmer rearing temperatures during the late winter and spring have been shown to advance the timing of the parr-smolt transformation in Atlantic salmon (Solbakken *et al.*, 1994). There is, however, an optimal temperature range and a limit for growth after which salmon parr will stop feeding due to thermal stress. During this time, protein degradation and weight loss will increase with rising water temperature (McCarthy and Houlihan, 1997).

*Issue 20: Threat Posed by Public Hatchery Practices*

*Comment 37*: Some commenters stated that the Status Review did not adequately address the risks posed by public hatchery practices given their dominant influence on Maine salmon and the proposed extension of the ESA's protection to their output.

*Response*: It is true that a hatchery program can have large impacts, both positive and negative, on fish populations. Every precaution is being taken to ensure that the river-specific rehabilitation program in Maine will enhance the population in a positive manner. Broodstock are collected in such a manner as to maximize the genetic material available in the individual rivers.

The rehabilitation program is carried out with the guidance of state and Federal fish genetic experts, and spawning is conducted according to protocols developed and peer reviewed by the Maine TAC and Assessment Committee. Activities are guided by program specific documents such as the following: *Broodstock Collection Recommendations to the Maine TAC* by the Maine Atlantic Salmon Broodstock Working Group; *Management and Spawning Protocols for Atlantic Salmon Broodstocks at the CBNFH, October, 1997*; *CBNFH Interim Disease Management Plan*, *Best Management Plan for SSSV by the Lamar (PA) Fish Health Unit, November 1999*; *Atlantic Salmon Broodstock Management and Breeding Handbook by the USFWS, Biological Report 89 (12) July 1989*; and the *CBNFH Standard Husbandry Procedures for Biosecurity* (In draft). Activities are also guided by regional and agency policies and guidelines regarding fish health and management plans such as the following: *Maine Atlantic Salmon Restoration and*

*Management Plan, 1995–2000, Atlantic Sea Run Salmon Commission*; *Report of the Maine Atlantic Salmon Authority to the Joint Standing Committee on Inland Fisheries and Wildlife*; *Maine Atlantic Salmon Management Plan with Recommendations Pertaining to Staffing and Budget Matters, January 1997*; and *Atlantic Salmon Conservation Plan for Seven Maine Rivers, The Maine Atlantic Salmon Task Force. March 1997*.

Fish health management is conducted in close consultation with the FWS' Lamar Fish Health Unit, the Maine Fish Health Technical Committee, and in strict compliance with state, regional, and Federal regulations, protocols, and guidelines.

Hatchery populations are included as part of the DPS when they are similar to the native, naturally spawned fish, and are listed along with the DPS when they are determined to be essential to the recovery of the wild population. These hatchery populations are vital to compensate for the prolonged period of low adult returns, but they are not counted as part of the recovery goal. That goal is based upon wild spawners returning. Since the river specific broodstock were derived from the wild populations, they are determined to be similar to the naturally spawning fish. Genetic analysis of the broodstock has confirmed that the genetic diversity of the wild populations is being maintained in the captive population. Therefore, the river-specific broodstock and their progeny are part of the DPS. The purpose of the river-specific program is to facilitate recovery of these depleted populations. The river specific program is providing a critical role in increasing the effective population size of five of the populations within the DPS, and therefore providing a buffer against extinction. The hatchery populations are, therefore, essential to the survival and recovery of the wild populations. The Services further believe that naturally spawning Atlantic salmon populations founded by the hatchery populations will play an important role in the recovery process.

The Services have issued a final policy regarding controlled propagation of species listed under the ESA (65 FR 56916, September 20, 2000). The policy recognizes that, in certain circumstances, controlled propagation is an essential tool for the conservation and recovery of listed species. The policy advises that if controlled propagation is to be used as a strategy in the recovery of a listed species, it must be conducted in a manner that will minimize risk to existing populations and preserve the genetic and ecological distinctness of the listed species. These have all been considerations in designing and administering the current hatchery program. The ongoing and future role of the river-specific rearing program in the overall recovery plan for the Gulf of Maine DPS will be fully addressed in the recovery plan to be developed following this listing action.

*Issue 21: Impact on Individuals*

*Comment 38*: Many commenters expressed concern that listing would affect the conduct of their daily lives by imposing additional restrictions upon them once listing occurred.

*Response*: Unless an individual or organization is engaged in an activity that is likely to result in a ''take'' of Atlantic salmon, they will not be affected by the listing. A list of potential take activities was provided in the proposed rule and a revised list is being published in this final rule. It is the opinion of the Services that few, if any, individual citizens will be engaged in these activities or any others which may cause ''take'' of salmon. The Services remain committed to working with individuals and industries to ensure adequate protection is provided to Atlantic salmon and their habitat while minimizing effects to individuals and businesses. The Services acknowledge that listing the DPS may require some modification of current practices in the aquaculture and agriculture industries, and the Services have been working with the affected groups to achieve the necessary level of protection for salmon within the DPS. We are confident that these changes can be accomplished with minimal disruptions.

*Issue 22: Citizen Suits*

*Comment 39*: Some commenters suggested that listing the DPS would bring a rash of lawsuits pursuant to the citizen suit provision of the ESA. The intent of the suits would be to force changes in land use or business practices in Maine.

*Response*: Section 11(g) of the ESA entitled ''Citizen Suits'' says, in part, ''* * * any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other Governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this act or regulation issued under the authority thereof.''

This provision of the ESA is exercised by citizens or organizations seeking redress in those instances where they contend that no action, limited action, or inappropriate action is putting listed or petitioned, species at risk. The individual or organization making such claims is required to present information to support its position. Currently, the only salmon-related active citizen suits under this provision in Maine are against the Services for accepting the State of Maine Atlantic Salmon Conservation Plan in 1997, and concurrently withdrawing a proposed rule designating a seven-river DPS as ''threatened.''

*Issue 23: Resources for Recovery*

*Comment 40*: Some commenters expressed concern that there were not adequate resources to bring about salmon recovery.

*Response*: The determination of whether a species is ''threatened'' or ''endangered'' is a biological one and does not consider the economic benefits or costs of listing. The Services acknowledge that listing does not guarantee that additional funding will become available, but the ''endangered'' or ''threatened'' designation raises the level of awareness about the species' plight, and allows the Services to spend funds from the portions of both Services' budgets designated for listed species management and protection. It also increases the likelihood that other involved Federal, State, and private organizations will dedicate more funds for salmon recovery. It is also important to note that section 7 of the ESA provides mandatory protection from any Federally permitted, authorized, funded, or carried out activities that would cause jeopardy. In fact, the proposal has already generated increased involvement and funding commitments from a number of Federal agencies including the Environmental Protection Agency (EPA), ACOE, and the Natural Resource Conservation Service. The State of Maine has also authorized additional salmon funds in the most recent legislative session.

*Issue 24: Economic Concerns*

*Comment 41*: Many commenters at the public hearings orally and in writing expressed concern that additional regulations that accompany listing would cause severe economic hardship, particularly in Washington County, and that many people could lose their jobs as a result.

*Response*: Section 4(b)(1)(A) of the ESA states, in part, that listing determinations shall be made, ''..solely on the basis of the best scientific and commercial data available..'' without weighing economic factors. The Services acknowledge the concerns that have been expressed and have adopted a number of policies to make implementation of the ESA more

flexible and to increase the options that affected citizens have in order to comply with the law. These are designed to encourage conservation by private landowners and others and provide them some certainty as to what is expected in the future. These policies include: ''Safe Harbor Agreements,'' which provide landowners who voluntarily implement conservation actions for listed species with assurances that their regulatory obligations will not increase with an increase in these species on their lands; ''habitat conservation plans'' (HCPs) or ''conservation plans,'' which must accompany an application for a Section 10(a)(1)(B) incidental take permit; and ''No Surprises'' under Section 10(a)(1)(B), which provides assurances to landowners that if ''unforeseen circumstances'' arise, there will be no additional commitment of land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in a properly implemented habitat conservation plan.

*Issue 25: Predation*

*Comment 42*: Many commenters expressed concerns that unchecked populations of seals and cormorants were contributing to declining salmon populations.

*Response*: The FWS has begun development of a draft Environmental Impact Statement (EIS) and management plan for double crested cormorants. It will explore alternatives for managing cormorants throughout the contiguous United States including such options as a hunting season, control at breeding colonies by state agencies, and the continued issuance of depredation permits to private landowners. Maine has identified salmon as one of several issues that should be examined during the EIS process, as required under the National Environmental Policy Act of 1969 (NEPA).

The 2000 Annual Meeting of the USASAC held a special session on seals and seal predation on Atlantic salmon. It was reported that populations of both grey and harbor seals have experienced steady growth since the early 1980s. Harbor seals in the vicinity of the Maine coast have experienced an 8.9–percent annual increase in their population. Populations of grey seals experienced a 7.4–percent annual growth in the Gulf of St. Lawrence, and a 12.6–percent increase at Sable Island. It was noted that seals are opportunistic feeders and will target both benthic and schooling pelagic fish species. Primary diet items of harbor seals include herring, cod, pollock, squid and hake. No salmon have been identified in harbor seal stomachs. Grey seals feed primarily on squid, herring, hake, and cod. There are two documented cases of grey seal predation on Atlantic salmon in the Gulf of St. Lawrence. During trapping operations in Maine incidents of scarring and injury on adult Atlantic salmon have been observed. The DFO conducted a literature search on seal predation and found that only two Atlantic salmon were found out of 5,680 seal stomachs examined. It was noted that if 100 percent of the Atlantic salmon biomass in the Atlantic Ocean were consumed by harp seals, Atlantic salmon would account for only 0.01 percent of their annual diet. This illustrates the difficulty in documenting Atlantic salmon predation by seals.

Based on existing information, it appears that additional investigation is warranted to examine the potential for localized seal predation on salmon at critical concentration points and times such as during smolt outmigration and in the vicinity of weirs. In addition, seal predation at marine cages is of concern because it results in a loss in inventory for the grower and because it increases the potential for escape of farmed fish. The NMFS is working with the State of Maine to investigate these issues.

Lethal take of marine mammals is authorized under the Marine Mammal Protection Act (MMPA) under very limited situations. Specifically, section 109(h)(1) of the MMPA authorizes Federal, state, and local officials to take marine mammals in a humane manner in the course of their duties if such taking is for: (A) the protection or welfare of the mammal, (B) the protection of the public health and welfare, or (C) the nonlethal removal of nuisance animals. Section 101(c) authorizes the taking of marine mammals if imminently necessary in self defense or to save the life of a person in immediate danger. Lethal taking to protect fishing gear or catch is prohibited by section 118(a)(5) and 101(a)(4). In the 1994 amendments to the MMPA, Congress directed a scientific investigation be conducted to determine whether California sea lions and Pacific harbor seals are having a significant negative impact on the recovery of salmonid fishery stocks listed under the ESA or are having broader impacts on the coastal ecosystems of Washington, Oregon, and California. The Working Group recommended additional research in a number of areas but found that existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations. In February 1999, based on these working group recommendations, NMFS submitted a report to Congress with the following four recommendations: implement site-specific management for California sea lions and Pacific harbor seals; develop safe, effective, non-lethal deterrents; selectively reinstate authority for commercial fishers to kill harbor seals and sea lions to protect their gear and catch; and conduct additional research. Studies on the interactions of seals with netpens and at natural concentration sites (weirs, falls) should be conducted.

*Issue 26: Forest Practices*

*Comment 43*: Some commenters suggested that current forest practices may be negatively affecting salmon.

*Response*: Although the Status Review and the Maine Atlantic Salmon Conservation Plan identify a number of activities associated with forest practices that have the potential to affect salmon, the Services do not believe that current forest practices pose a significant threat to the well-being of the species. However, given the precarious status of the species even minor impacts must be recognized and dealt with. Consequently, the Services will continue to work with the industry, the Watershed Councils, and Project SHARE to secure additional habitat protection throughout the watersheds.

*Issue 27: Agricultural Practices*

*Comment 44*: A number of commenters expressed concern that agricultural activities in Maine were negatively impacting salmon.

*Response*: The Services do not believe that current agricultural practices are a major threat to the DPS with the exception of water withdrawals from the Pleasant, Narraguagus, and Machias Rivers. Pesticide sampling has been conducted in seven of the DPS watersheds, and hexazinone was the only chemical detected. There is no evidence that it is toxic to fish. Pollution from livestock can affect water quality, but efforts are underway to eliminate the impacts. Livestock husbandry is limited primarily to the mid-coast watersheds. As noted here, significant progress is being made to insure that withdrawals of irrigation water are protective of salmon, but more work remains to be done before the Services can consider this threat to be eliminated. The Services will continue to monitor forestry and agricultural practices and their effects on salmon during the recovery process.

*Issue 28: Local Involvement*

*Comment 45*: A number of commenters urged the Services to be cognizant of the critical role of local citizens in the protection and recovery of Atlantic salmon. Some expressed concern that the involvement and cooperation of such citizens would cease with a listing action.

*Response*: The Services fully agree that the successful recovery of Atlantic salmon will depend on the cooperation and involvement of the citizens of Maine and in particular those who live and work in the eight watersheds. The ESA encourages cooperative efforts and local involvement. As stated at the public hearings and elsewhere, the Services intend to draft a recovery plan for the Gulf of Maine DPS of Atlantic salmon by building upon the model of the Maine Conservation Plan which emphasizes citizen involvement. The Services envision a large role for the Watershed Councils in the recovery planning process and, based on comments provided at the public hearing, will also involve local Soil and Water Districts.

**Summary of Factors Affecting the Gulf of Maine DPS of Atlantic Salmon**

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 also requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their application to the Gulf of Maine DPS of Atlantic salmon are described here.

*(A) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range*

Demonstrated and potential impacts to Atlantic salmon habitat within the DPS watersheds result from the following causes: (1) Water extraction; (2) sedimentation; (3) obstructions to passage including those caused by beaver and debris dams and poorly designed road crossings; (4) input of nutrients; (5) chronic exposure to insecticides, herbicides, fungicides, and pesticides (in particular, those used to control spruce budworm); (6) elevated water temperatures from processing water discharges; and (7) removal of vegetation along streambanks. The most obvious and immediate threat is posed by water extraction on some rivers within the DPS range, as it has the potential to expose or reduce salmon habitat.

The threat of blocked passage due to debris or beaver dams is an annual event. The ASC, Project SHARE, and the Watershed Councils have demonstrated an ability to annually remove or reduce that threat. Chronic exposure to chemical residues in the water is a threat that warrants further investigation. In particular, potential impacts during the process of smoltification are being examined. Sedimentation from a variety of sources also warrants closer review as it may be altering habitat and rendering it incapable of supporting Atlantic salmon. Water temperatures in the vicinity of berry processing water discharges should be monitored to determine if they make habitat unsuitable for Atlantic salmon. Permit exemptions for agriculture practices should be evaluated to determine if they provide adequate protection to riparian habitat.

All of these potential impacts to Atlantic salmon habitat need to be examined in more detail for their individual and cumulative impacts. Study results on the Narraguagus River demonstrate that full freshwater production is not being achieved despite fry stocking efforts. These results could mean that one or a combination of factors within the rivers is negatively impacting freshwater habitat for Atlantic salmon. The relationship between these factors and freshwater production and survival of salmon needs to be studied in detail so that cause and effect connections can be determined or ruled out. Corrective actions can then be implemented as appropriate to enhance recovery.

There does not appear to be one particular habitat issue which poses a significant threat to the entire DPS by itself. Because of their indirect relationship to habitat, agricultural water withdrawals are discussed separately in relation to listing factor (D) below. Additional study will be needed to determine whether the cumulative impacts from habitat degradation discussed here may reduce habitat quality and limit habitat quantity available to Gulf of Maine DPS salmon at various stages in their life history within freshwater. At present, the scientific and commercial data available do not show that loss of habitat is creating a danger of extinction to the DPS.

*(B) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The United States joined with other North Atlantic nations in 1982 to form the North Atlantic Salmon Conservation Organization (NASCO) for the purpose of managing salmon through a cooperative program of conservation, restoration, and enhancement of North Atlantic stocks. NASCO achieves its goals by controlling the exploitation by one member nation of Atlantic salmon that originated within the territory of another member nation. The U.S.' interest in NASCO stemmed from its desire to ensure that foreign fisheries intercepting U.S. origin fish did not compromise the long-term commitment by the states and Federal government to rehabilitate and restore New England Atlantic salmon stocks.

On February 5, 1999, the DFO announced adoption of the precautionary approach by a continued closure of the commercial Atlantic salmon fishery for Newfoundland and Labrador for an additional three years. Further restrictions on Canadian Atlantic salmon recreational fisheries were also announced, including the requirement to only use barbless hooks for angling in Newfoundland and Labrador, and coordination with Watershed Management groups.

In 1999, the West Greenland Commission of NASCO agreed on a multi-year approach for conservation of salmon stocks in Greenland, and, therefore, for 1999 and 2000, the catch at West Greenland in each of the years is restricted to the amount used internally in Greenland. The reported catch in 1999 was 19 tons and the unreported catch was estimated to be approximately 10 to 15 tons. Based on discriminant analysis of characteristics from scales sampled in the fishery, 91 percent of fish in 1999 were of North American origin, the highest proportion on record. The catch at West Greenland in 1999 was estimated to consist of 17.8 tons (5,700 salmon) of North American origin and 1.8 tons (600 salmon) of European origin. These values represent an increase of 84 percent of the North American and a reduction of 33 percent of the European components, respectively, from the landings in 1998.

In October 1987, the New England Fishery Management Council prepared a Fishery Management Plan (FMP) to implement U.S. management authority for all Atlantic salmon of U.S. origin pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The FMP was intended to safeguard U.S. Atlantic

salmon, protect the U.S. investment in the state/Federal restoration program, and strengthen the U.S. position in international negotiations. The FMP prohibits possession of Atlantic salmon in the Exclusive Economic Zone.

Starting in the 1980s, as runs decreased, the Maine Atlantic Sea Run Salmon Commission imposed increasingly restrictive regulations on the recreational harvesting of Atlantic salmon in Maine. The allowable annual harvest per fisherman was reduced by the State from ten salmon in the 1980s to one grilse in 1994. In 1995, regulations were promulgated to allow only catch and release fishing for Atlantic salmon in Maine, closing the last remaining recreational harvest opportunities for sea run Atlantic salmon in the United States. From the 1960s through the early 1980s, the average exploitation rate in Maine rivers has been estimated to range from approximately 20 percent to over 25 percent of the run (Beland, 1984; Baum, 1997). In retrospect, this level of harvest was likely too high, especially in light of the extensive commercial harvest at that time. In 1993, the documented sport catch of sea-run Atlantic salmon in Maine was 659 fish, with 152 killed, and 507 released (USASAC, 1994). The USASAC reported that 33 fish were caught and released within the range of the DPS in 1997, 20 fish in 1998, and 12 in 1999. In December 1999, salmon angling was closed statewide.

Atlantic salmon parr remain vulnerable to harvest by trout anglers and mortality associated with this activity has been documented. It is believed that poaching activity occurs at fairly low levels in Maine rivers. The low returns of wild adult salmon to Maine rivers highlight the importance of continuing assessment of all sources of mortality that may pose a risk to the DPS.

Both commercial and recreational harvest of Atlantic salmon historically played a role in the decline of the Gulf of Maine DPS of Atlantic salmon. The Canadian commercial fishery in Newfoundland and Labrador is under a moratorium for the next 3 years. The West Greenland commercial fishery will continue as an internal use only fishery through the 2000 fishing season. Continuation of the internal use fishery in Greenland poses a reduced but continuing concern to the Gulf of Maine DPS of Atlantic salmon. Recreational fishing targeting other species also has the potential to result in the incidental catch of Atlantic salmon at various life stages. This could result in their injury or death. Thus, these fisheries also pose a threat to Atlantic salmon. There was one documented poaching event in 1998, indicating that poaching continues to pose a threat to Atlantic salmon. Continued enforcement efforts and adequate penalties are essential to minimize this threat.

In view of elimination of the directed fishery in Maine and changes in the high seas fishery, the existing commercial fishery off West Greenland and bycatch in existing recreational fisheries in Maine are no longer considered as limiting the survival of the Gulf of Maine DPS of Atlantic salmon. Therefore, the best data presently available do not show that overutilization is creating a danger of extinction.

*(C) Disease or Predation*

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild, though major losses due to disease are generally associated with salmon aquaculture. The level of threat from disease has remained relatively static until the last 3 years. Three recent events that have increased disease as a threat to the DPS are: (1) The appearance of the ISA virus in 1996 in Canada, within the range of possible exposure of migrant DPS salmon, subsequent spreading of that disease closer to the Maine border, and the collection of aquaculture escapees and wild fish testing positive for the ISA virus; (2) the discovery in 1998 of the retrovirus SSSV within the DPS; and (3) new information available in 1999, on the potential impact of coldwater disease (CWD) on salmon.

Wild parr were taken from the Pleasant River, Maine, in 1995 (180), 1996 (80), and 1997 (164), and held in isolation at the NANFH and a private hatchery in Deblois, ME for the purposes of rearing the fish to sexual maturity, spawning them, and returning progeny back to the Pleasant River. Mortalities associated with tumors in the viscera (particularly the swimbladder) began to appear in the salmon at North Attleboro in 1997 and continued in 1998. Cornell University scientists identified the causative agent as a retrovirus named SSSV that had never been previously documented except once in Scotland in the 1970s. Virus-positive fish from North Attleboro were moved to a quarantine facility at the USGS facility in Leetown, WV to obtain detailed information about the virus.

Pleasant River fish at the Deblois Hatchery were also found to be positive for the virus, though no disease or mortality occurred. Further testing of wild salmon held as broodstock at the CBNFH showed that the virus was present in carrier state in eight individuals of over 500 tested. Some of these individuals had been in captivity for several years, and others were only recently captured and held in isolation. The implications are that the virus exists at some level in wild populations and has been present for at least several years. However, its presence in a carrier state in two other hatcheries, some for several years, without any clinical indication of disease, and the lack of any observation of symptoms in wild populations suggest that the threat of disease from SSSV is limited. Until future research or experience provides additional information, the threat associated with this virus remains uncertain. The virus has caused lethal disease under conditions that existed at one hatchery and, therefore, must be considered a threat.

The second virus that represents a relatively new threat to the DPS is the causative agent of ISA. This virus causes lethal disease in maturing salmon held in salt water. Discovered in 1984, it was known only in Norway prior to 1996, when it was diagnosed in aquaculture sea pens in New Brunswick, Canada. The following year it was found in Scotland. Monitoring in the Magaguadavic River in New Brunswick by the Atlantic Salmon Federation has confirmed both aquaculture escapees and wild fish infected with the ISA virus. There is no known control of the disease except removal of fish held within 5 km of an infected site. An extensive survey of Maine aquaculture operations found no ISA virus present within the United States. The Province of New Brunswick has taken extensive actions to control the spread of the virus. But the effectiveness of these actions is not assured and the affected Canadian aquaculture operations are near U.S. pen sites. Thus the virus represents a serious threat because of its potential to spread to the U.S. pens near the rivers and migration routes used by the Gulf of Maine DPS of Atlantic salmon.

Cold Water Disease caused by the bacterium *Flavobacterium psychrophilum* has recently been found to be a serious problem to Atlantic salmon in New England waters. New information from ongoing studies by the Biological Resources Division of the USGS at their Leetown Science Center, WV has shown that the pathogen induces pathology and subsequent mortality among juvenile Atlantic salmon. The pathogen is transmitted vertically from carrier sea-run adults to offspring via the eggs.

Predation has always been a factor influencing salmon numbers but under

conditions of a healthy population would not be expected to threaten the continued existence of that population. The threat of predation on the Gulf of Maine DPS of Atlantic salmon is significant today because of the very low numbers of adults returning to spawn and the dramatic increases in population levels of some predators, including cormorants, striped bass, and several species of seals.

Most rivers within the DPS range do not contain dams that delay and concentrate salmon smolts and make them more vulnerable to cormorant attacks. Also, the recovery of striped bass populations over the past decade is concentrated more in rivers south of the DPS range. Furthermore, cormorants and striped bass are transitory predators impacting migrant juveniles in the lower river and estuarine areas. Seals, however, have reached high population levels not reported before, and salmon remain vulnerable to seal predation through much of their range.

In summary, the threat of disease is escalated both by its potential impact on Atlantic salmon in the wild and the threat it poses to the health of the river-specific broodstock and to the role of the hatchery program in the recovery effort. The best available scientific and commercial data show that disease presently creates a danger of extinction to the Gulf of Maine DPS of Atlantic salmon. There are insufficient data at this time to show that predation creates a danger of extinction to the DPS.

*(D) Inadequacy of Existing Regulatory Mechanisms*

Major threats continue to be poor marine survival, water withdrawals, disease, and aquaculture impacts, especially interaction with European strain and hybrid (European/North American) salmon. A variety of state and Federal statutes and regulations seek to address threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO, many interagency agreements, and state-Federal cooperative efforts. Implementation and enforcement of these laws and regulations could be strengthened to further protect Atlantic salmon. The appropriate state and Federal agencies have established coordination mechanisms and have joined with private industries and landowners in partnerships for the protection of Atlantic salmon. These partnerships will be critical to the recovery of the species. Existing regulatory mechanisms either lack the capacity or have not been implemented adequately to decrease or remove the threats to wild Atlantic salmon. The discussion that follows will focus on those laws which have not proven sufficient to deal with threats, or, if adequate, are not being sufficiently implemented or enforced.

(1) Water withdrawals

Maine has made substantial progress in addressing the issue of agricultural water withdrawals but regulations and water use planning are not complete and in place to provide sufficient protection to the DPS. The Maine Land and Water Resource Council and the Maine Land Use Regulatory Commission (LURC) must approve requests for withdrawals for irrigation, and can curtail withdrawals if water levels go below what is considered necessary for the well being of the species. Until the water use planning is complete, however, the allowable surplus above that needed for salmon has not been quantified. In 1999, the LURC limited the amount of water that could be drawn from the Pleasant, Narraguagus, and Machias Rivers. The State Department of Environmental Protection (DEP) is developing a rule to address withdrawals on a state-wide basis. At this point, water withdrawals in unorganized towns are not regulated. The absence of completed water management plans for all DPS rivers subject to future agricultural water withdrawals, and of permanent protection for salmon flows, creates a danger of extinction for the Gulf of Maine DPS.

(2) Disease

The European ISA virus has become established in North American aquaculture fish in proximity to Atlantic salmon in the DPS. The Services believe that Maine's fish health regulations may not fully ensure testing, reporting, and depopulation of diseased fish. Consequently, there remains an extremely serious possibility of ISA disease spreading from aquaculture fish. Also, the occurrence of a heretofore unknown retrovirus, SSSV, is not yet specifically addressed by any regulations. Disease episodes have impacted the Services' river-specific stocking program in that Pleasant River broodstock had to be destroyed. Efforts are now underway to reestablish that broodstock. The Services thus conclude that inadequate regulation of disease vectors presents a serious threat to the health of the DPS.

(3) Aquaculture

The known risks inherent in wild stocks interacting with aquaculture escapees have increased significantly from 3 years ago when the Services believed that certain restrictions on the importation and use of foreign salmon stocks were in place and enforced. Available data indicate that the percentage of European strain hybrid fish raised in aquaculture facilities has increased. Maine State Law (PL 1991 c381 sub section 2) restricts importing fish and eggs, but fails to restrict importing European milt, thus enabling expansion of the use of hybrids between European and North American salmon in aquaculture. Also, permit holders have continued to use European strains or hybrids despite their commitment not to when obtaining ACOE permits, which were issued in reliance on applications which stated that no European strains or hybrids would be placed in cages. In addition, permits have not been issued by the EPA under the Clean Water Act to limit the discharge of pollutants from these aquaculture facilities. Thus, existing regulatory mechanisms are not adequate to address the threat of non-native Atlantic salmon used in aquaculture facilities.

Existing regulatory mechanisms are not sufficient to remove the threat posed by agricultural water withdrawals, disease, and aquaculture to the Gulf of Maine DPS of Atlantic salmon. Given extremely low numbers of adult returns, without adequate regulation these threats create a danger of extinction of the Gulf of Maine DPS of Atlantic salmon.

*(E) Other Natural or Manmade Factors Affecting its Continued Existence*

The Maine Atlantic salmon aquaculture industry is currently composed of 12 companies, at 33 sites, with 773 cages covering 800 leased acres of water. Farms are concentrated in Cobscook Bay near Eastport, ME, but are located as far south as the Sheepscot River, although that site currently does not grow Atlantic salmon. The industry in Canada is approximately twice the size of the Maine industry. In addition, two freshwater hatcheries are located on rivers within the DPS range.

Atlantic salmon that escape from farms and hatcheries pose a threat to native Atlantic salmon populations in coastal Maine rivers. Escapes and resultant interactions with native stocks are expected to increase given the continued operation of farms and growth of the industry under current practices. There is substantial documentation that escaped farmed salmon disrupt redds of wild salmon, compete with wild salmon for food and habitat, interbreed with wild salmon, transfer disease or parasites to wild salmon, and/or degrade benthic habitat (Clifford, 1997; Youngson *et al.*, 1993;

Webb *et al.*, 1993; Windsor and Hutchinson, 1990; and Saunders, 1991). A comparison study in Canada revealed that survival of wild post-smolts moving from Passamaquoddy Bay to the Bay of Fundy was inversely related to the density of aquaculture cages (DFO, 1999). In addition, there has recently been concern over interactions when wild adult salmon migrate past closely spaced cages, creating the potential for behavioral interactions, disease transfer or interactions with predators (DFO, 1999; Crozier, 1993; Skaala and Hindar, 1997; Carr *et al.*, 1997; and Lura and Saegrov, 1991).

Atlantic salmon that either escaped or were released from aquaculture facilities have been found in the St. Croix, Penobscot, Dennys, East Machias, and Narraguagus Rivers in the United States (Baum, 1991; USASAC, 1996; 1997). In 1994 and 1997, escaped farmed fish represented 89 percent and 100 percent, respectively, of the documented run for the Dennys River, and in 1995, 22 percent of the documented run for the Narraguagus River. Escaped farmed salmon have also been documented as an incidental capture in the recreational fishery, and observed in the Boyden, Hobart, and Pennamaquan Rivers. The first aquaculture escapee in the State of Maine was documented in 1990, and the first sexually mature escapee was documented in 1996. Escaped farmed fish are of great concern in Maine because even at low numbers they can represent a substantial portion of fish in some rivers. Also, populations at low levels are particularly vulnerable to genetic intrusion or other disturbance caused by escapees (DFO, 1999; Hutchings, 1991). Preliminary results from the 1999 wild smolt assessment project in the Pleasant River suggest that several outmigrating smolts were of hatchery origin based on fin condition (Kocik *et al.*, 1999, unpublished data). Of the 676 outmigrating smolts that were captured between April and May 1999, between five percent and 25 percent were estimated to be of hatchery origin.

Given current aquaculture practices, the Services have opposed the use of reproductively viable European strains (pure and hybrid) of Atlantic salmon within North America and the continued importation of European gametes (milt). This opposition is based on genetic studies that demonstrate that there are significant differences between North American and European Atlantic salmon (King *et al.*, 1999), and the advice from geneticists that interbreeding among genetically divergent populations negatively impacts natural populations (Utter, 1993; Verspoor, 1997; and Youngson and Verspoor, 1998). The introgression by non-North American Atlantic salmon stocks presents a substantial threat of disrupting the genetic integrity of North American stocks and threatens fitness through outbreeding depression.

Comprehensive protective solutions to minimize the threat of interactions between wild and aquaculture salmon have not been implemented. The industry voluntarily adopted a Code of Practice in October 1998. The Services are not aware of monitoring results of that Code but note that escapes continued to be documented in the DPS in 1999 and 2000, when the Code was in place. Weirs help minimize the potential interaction between escapees and wild salmon, but they are not present on all rivers and where present are only in place seasonally. In 1997 and 1998, the Services worked with industry and State representatives in an attempt to eliminate further importation of European stocks, remove pure European strain from marine cages, mark all fish prior to placement in marine cages, and phase out the holding of North American/European hybrids. These efforts were unsuccessful. In July of 1999, the Services initiated discussions directly with the Maine DMR (the state agency responsible for aquaculture industry regulation). These discussions were only partially successful because, although information was exchanged, agreement on timing or specific measures was not reached.

Further, marine survival rates, as discussed in a second threat within factor (E), continue to be low for U.S. stocks of Atlantic salmon, and the subsequent low abundance of salmon impedes recovery of the DPS. Scientists have attributed natural mortality in the marine environment to sources that include stress, predation, starvation, disease, parasites, and abiotic factors. In addition, scientific studies indicate that year-to-year variation in return rates of U.S. salmon stocks is generally synchronous with other North Atlantic stocks. This information suggests that the trend in return rates is, in part, the result of factors that occur when the stocks are in the North Atlantic, particularly the Labrador Sea. Scientists have concluded that a significant proportion of the variation in recruitment or return rate is attributed to post-smolt survival. However, the factors responsible for reduced post-smolt survival are not well understood.

Thus, existing aquaculture practices and low marine survival create a danger of extinction of the Gulf of Maine DPS of Atlantic salmon.

**State Conservation Efforts**

Section 4(b)(1)(A)of the ESA requires us, in making a listing determination, to take into account efforts being made by the state, foreign nations, or their political subdivisions, to protect the DPS of Atlantic salmon. In 1997, Maine developed a conservation plan that attempted to identify and address threats to the species. The state has implemented a number of the items contained in the various sections of the plan. Additional details on conservation activities can be found in the 1999 Annual Progress Report on implementation of the Maine Atlantic Salmon Conservation Plan for Seven Maine Rivers, prepared by the Maine Atlantic Salmon Commission and available at www.state.me.us/asa/99AnnRpt.html. Since publication of the proposed rule on November 17, 1999, the following accomplishments can be noted:

a. In December 1999, the State closed all salmon fishing until further notice, thus eliminating this as a source of mortality. The possibility of mortality from bycatch still exists when trout, striped bass, and other fish are the being targeted.

b. The final draft of the Pleasant River water use management plan is scheduled for completion in the fall of 2000. Draft plans for the Narraguagus River and a major tributary will be available then as well. Planning efforts have included instream flow requirements to protect salmon, and alternative sources of water are being sought.

c. The State of Maine appropriated $810,000 for Atlantic salmon in fiscal year 2000/2001. The DEP hired a water quality specialist dedicated to the DPS rivers with a portion of those funds. The Maine ASC manages the distribution of the balance of available funds. Watershed Councils and other groups have submitted proposals for salmon and salmon habitat projects to the ASC for funding consideration.

d. Weirs constructed by the State of Maine are in place and functioning on the Dennys and Pleasant Rivers.

e. Acquisition and permanent protection of a 220–acre tract of land on the Narraguagus River was completed in October 2000.

f. The Maine ASC and the FWS continue to map salmon habitat in the eight DPS rivers. Mapping and geographic information system (GIS) coverage will be completed for the East Machias River this year.

In determining whether to make this rule final, we have carefully assessed the best scientific and commercial

information available regarding the past, present, and future threats faced by the Gulf of Maine DPS of Atlantic salmon, while taking into account ongoing conservation efforts and commitments made by the State of Maine and other entities. Based on our evaluation, listing the Gulf of Maine DPS of Atlantic salmon as endangered is warranted.

The Services are listing this DPS of anadromous Atlantic salmon as endangered under the ESA because of the danger of extinction created by factor (C) through disease; factor (D) through inadequate regulation of agricultural water withdrawals, disease, and aquaculture; and factor (E) through existing aquaculture practices and low marine survival. These factors take on added significance given the poor adult returns and lower than expected parr to smolt survival. At present, the DPS is known to include populations of Atlantic salmon in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers, as well as Cove Brook. Both the naturally reproducing populations of the Gulf of Maine DPS of Atlantic salmon and those river-specific hatchery populations cultured from them are included in this listing. In the future, DPS populations may be identified in additional rivers based on ongoing stream surveys and continuing genetic analyses. This could be done in a separate notification process.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state agencies, private organizations, groups, and individuals. The ESA provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, here.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402. 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 formal consultation with us.

Federal activities that could occur and impact the Gulf of Maine DPS of Atlantic salmon include, but are not limited to, the carrying out or the issuance of permits for marine aquaculture pen sites, freshwater hatcheries, cranberry bog development, water withdrawal projects, pesticide registration, streambank stabilization, and road and bridge construction. In our experience, nearly all ESA section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

In addition, ESA section 7(a)(1) requires all Federal agencies to review the programs they administer and use these programs in furtherance of the purposes of the ESA. All Federal agencies, in consultation with us, are to carry out programs for the conservation of endangered and threatened species listed pursuant to section 4 of the ESA.

The Services believe that the State of Maine's Atlantic salmon conservation plan can become a strong foundation for recovery once it is revised and updated to take current conditions, threats, and progress into account. We will work closely with Maine agencies, conservation groups, and industry participants to bring the plan up to date and ensure effective implementation.

The ESA and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. To possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally is also illegal.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the ESA for the species. The intent of this policy is to increase public awareness as to the effects of this final listing on future and ongoing activities within this species range.

The Services believe that, based on the best available information, the following actions are unlikely to result in a violation of section 9:

(1) Possession of Atlantic salmon acquired lawfully by permit issued by the Services pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(2) Federally approved projects that involve activities such as silviculture, agriculture, road construction, dam construction and operation, discharge of fill material, siting of marine cages for aquaculture, hatchery programs, and stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by the Services in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Routine culture and assessment techniques, including the FWS' river-specific rehabilitation program at CBNFH; and

(4) Emergency responses to disease outbreaks.

Activities that the Services believe could result in violation of section 9 prohibitions against ''take'' of the Gulf of Maine DPS of anadromous Atlantic salmon include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and illegal harvest;

(2) The escapement of reproductively viable non-North American strain or non-North American hybrid Atlantic salmon in freshwater hatcheries within the DPS range;

(3) The escapement from marine cages or freshwater hatcheries of domesticated salmon such that they are found entering or existing in rivers within the DPS range;

(4) Failure to adopt and implement fish health practices that adequately protect against the introduction and spread of disease;

(5) Siting and/or operating aquaculture facilities in a manner that negatively impacts water quality and/or benthic habitat;

(6) Discharging (point and non-point sources) or dumping toxic chemicals, silt, fertilizers, pesticides, heavy metals, oil, organic wastes or other pollutants into waters supporting the DPS;

(7) Blocking migration routes;

(8) Destruction and/or alteration of the species' habitat (e.g., instream dredging, rock removal, channelization, riparian and in-river damage due to livestock, discharge of fill material, operation of heavy equipment within

the stream channel, manipulation of river flow);

(9) Violations of discharge or water withdrawal permits that are protective of the DPS and its habitat;

(10) Pesticide or herbicide applications in compliance with or in violation of label restrictions; and

(11) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

Other activities not identified here will be reviewed on a case-by-case basis to determine if violation of section 9 of the ESA may be likely to result from such activities. We do not consider these lists to be exhaustive and provide them as information to the public.

This final rule applies all ESA section 9 (16 U.S.C. 1538) protective measures to prohibit taking, interstate commerce, and other prohibitions applicable to endangered species, with the exceptions provided under section 10 of the ESA (16 U.S.C. 1539). Section 9 of the ESA and implementing regulations (50 CFR 17.21) set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

For listed species, ESA section 7(a)(2) (16 U.S.C. 1536(a)(2)) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed 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 the Services. Consultations will be conducted on a river-specific basis pursuant to identification of river-specific recovery units within the DPS.

ESA sections 10(a)(1)(A) and 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(A) and (a)(1)(B)) provide the Services with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. The Services have issued section 10(a)(1)(A) research/enhancement permits for other listed species for a number of activities.

ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research not receiving Federal authorization or funding, and the implementation of state fishing regulations.

## National Environmental Policy Act

The FWS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The notice for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216–6).

## Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094 which expires on February 28, 2001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

## References Cited

You may request a complete list of all references cited in this document from Paul Nickerson or Mary Colligan (see **ADDRESSES**).

## Classification

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act is not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 13132 and are exempt from review under Executive Order 12866.

## Authors

The primary authors of this document are Mary Colligan, NMFS, and Paul Nickerson, FWS; refer to **ADDRESSES** section.

## List of Subjects

*50 CFR Part 17*

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

*50 CFR Part 224*

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

For the reasons set out in the preamble, 50 CFR parts 17 and 224 are amended as follows:

## PART 17–ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following entry, in alphabetical order under FISHES, 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 | | | | | | |
| * | * | * | * | * | * | * | |
| FISHES | | | | | | | |

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * * | * | * | * * * | | | * | |
| Salmon, Atlantic ..... | *Salmo salar* | U.S.A., Canada, Greenland, western Europe | U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine. | E | 705 | NA | NA |
| * * | * | * | * * * | | | * | |

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.101, paragraph (a) is revised to read as follows:

**§ 224.101 Enumeration of endangered marine and anadromous species.**

* * * * *

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

| Species[1] | | Where listed | When listed | Critical habitat |
|---|---|---|---|---|
| Common name | Scientific Name | | | |
| Shortnose sturgeon | *Acipenser brevirostrum* | U.S.A., northwestern Atlantic, in river systems from the Saint John River in New Brunswick, Canada, to the St. Johns River, Florida | 32 FR 4001, Mar. 11,1967 | NA |
| Southern California steelhead | *Oncorhynchus mykiss* | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive) | 62 FR 43937, Aug. 18, 1997 | 64 FR 5740, Feb. 5, 1999 |
| Upper Columbia River steelhead | *Oncorhynchus mykiss* | U.S.A., WA, including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.—Canada Border | 62 FR 43937, Aug. 18, 1997 | 64 FR 5740, Feb. 5, 1999 |
| Snake River sockeye salmon | *Oncorhynchus nerka* | U.S.A., ID, Snake River | 56 FR 58619, Nov. 20, 1991 | 58 FR 68543, Dec. 28, 1993 |

| Species[1] | | Where listed | When listed | Critical habitat |
|---|---|---|---|---|
| Common name | Scientific Name | | | |
| Upper Columbia River spring-run chinook salmon | *Oncorhynchus tshawytscha* | U.S.A., WA, including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny) | 64 FR 14308, Mar. 24, 1999 | 65 FR 7764, Feb. 16, 2000 |
| Sacramento River winter-run chinook salmon | *Oncorhynchus tshawytscha* | U.S.A., CA, Sacramento River | 59 FR 13836, Mar. 23, 1994 | 58 FR 33212, Jun. 16, 1993 |
| Salmon, Atlantic | *Salmo salar* | U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine. | | NA |
| Totoaba | *Cynoscion macdonaldi* | Mexico, Gulf of CA | 44 FR 29480, May 21, 1979 | NA |
| * | * | * | * * | * * |

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs)(for a policy statement, see 56 FR 58612, November 20, 1991)

Dated: November 13, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

Dated: November 8, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

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BILLING CODE 3510–22–F, 4310–55–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 000831250-0250-01; 102500C]**

## Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Closure of Directed Fishery for Pacific Mackerel; Correction

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

**ACTION:** Correction to the action closing the directed fishery for Pacific mackerel.

**SUMMARY:** This document contains a correction to the Pacific mackerel closure which was published on November 1, 2000.

**DATES:** Effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Southwest Region, NMFS, 562-980-4036.

**SUPPLEMENTARY INFORMATION:**

### Background

The directed fishery for Pacific mackerel was closed at 12:01 a.m. on October 27, 2000, by publication of a document in the **Federal Register** on November 1, 2000 (65 FR 65272). The document contains an error that requires correction.

### Correction

In rule FR DOC. 00-28109, on page 65272, in the issue of Wednesday, November 1, 2000 (65 FR 65272), make the following correction:

On page 65272, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, the last sentence is corrected to read as follows:

''For the reasons stated here and in accordance with the FMP and its implementing regulations at 50 CFR 660.509, the directed fishery for Pacific mackerel will be closed October 27, 2000, after which time no more than 20 percent by weight of a landing of Pacific sardine, northern anchovy, jack mackerel, or market squid may consist of Pacific mackerel.''

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–29415 Filed 11–16–00; 8:45 am]

BILLING CODE: 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration (NOAA)

## 50 CFR Part 679

**[Docket No. 000714206-0307-02; I.D. 061400A]**

**RIN 0648-AM53**

## Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. ACTION: Final rule.

**ACTION:** Final rule

**SUMMARY:** NMFS issues a final rule that reduces observer experience requirements for some catcher vessels and reduces observer coverage experience requirements for some shoreside processors participating in the Western Alaska Community Development Quota (CDQ) fisheries. This action is necessary to reduce costs associated with the observer coverage requirements in the CDQ fisheries. It is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Effective December 18, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator at the same address.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

Background

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

Through the CDQ program, NMFS allocates a portion of the BSAI groundfish, prohibited species, halibut, and crab total allowable catch (TAC) to 65 eligible Western Alaska communities. Unlike open access fisheries, the program makes individual vessels, processors, and CDQ groups accountable for their catch of groundfish and prohibited species. Because of this, the catch monitoring observer coverage and observer training standards are more stringent as compared to many other fisheries. CDQ observers receive more training and must have more experience than regular NMFS-certified observers. Observer coverage levels in the CDQ fisheries are also higher than those for most of the non-CDQ fisheries. In most cases, at least one of the CDQ observers on a vessel or in a processing plant also must be qualified as a ''lead'' CDQ observer. Lead qualification is gear-specific and is gained by having prior experience with the same gear type as the CDQ vessel on which the lead observer is deployed, or prior experience in a shoreside plant if the lead CDQ observer is deployed at a shoreside plant.

NMFS has reviewed the observer coverage and experience requirements and determined that, in some cases, the observer coverage or training requirements could be reduced without affecting the ability of NMFS to collect the data necessary to monitor and manage the CDQ fishery.

On July 24, 2000, NMFS published a proposed rule to implement these reductions (65 FR 45579). The proposed rule included a full description of observer coverage and training requirements in the CDQ fisheries, and the rationale for reducing those requirements. The proposed rule also solicited public comment for 30 days. No comments were received, and NMFS is publishing this final rule without changing the regulatory text of the proposed rule.

This final rule implements the following reductions in observer coverage and experience requirements:

1. Elimination of the requirement for a lead CDQ observer on all catcher

vessels greater than or equal to 60 ft (18.3 m) LOA using trawl gear. A CDQ observer is still required. This reduction is justified because the vessel must retain all groundfish CDQ and salmon prohibited species quota (PSQ) and deliver it to a shoreside processor, where it is sorted by species, weighed, and reported to NMFS. Existing regulations require a lead CDQ observer on a vessel to estimate the at-sea discards of halibut PSQ and crab PSQ and monitor compliance with retention requirements. NMFS believes that these duties can be performed adequately by a CDQ observer who has prior experience as an observer, but not necessarily gear-specific experience required of a lead CDQ observer.

2. Elimination of the requirement for a lead CDQ observer on a catcher vessel greater than or equal to 60 ft (18.3 m) LOA using nontrawl gear that chooses to retain all groundfish CDQ species (option 1 defined at 50 CFR 679.32(c)(2)(ii)(A)). A CDQ observer is still required. NMFS believes the gear-specific experience of a lead CDQ observer is unnecessary for vessels choosing catch accounting option 1. NMFS will continue to require a lead CDQ observer on catcher vessels using nontrawl gear that select option 2, which uses observer data as the basis for all CDQ catch accounting.

3. Elimination of the requirement that a shoreside processing plant provide a CDQ observer to monitor deliveries from catcher vessels that use nontrawl gear and select option 2. Under option 2, only data collected by the observer on the catcher vessel is used for CDQ catch accounting. Therefore, neither a lead CDQ observer nor a CDQ observer is necessary at the plant.

4. Elimination of the requirement that shoreside processors required to provide CDQ observers provide a lead CDQ observer when taking CDQ deliveries. A CDQ observer is still required. NMFS has determined that prior experience in a shoreside plant is not necessary for the observer to adequately monitor the sorting and weighing of CDQ deliveries.

5. Reduction of the observer coverage requirements for shoreside processors taking CDQ deliveries from catcher vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear and using option 1 (full retention) for CDQ catch accounting to allow the vessel observer to monitor the CDQ delivery in the processing plant. A separate CDQ observer for the shoreside processor is not necessary if the vessel observer can monitor the sorting and weighing of catch at the shoreside processor without exceeding the regulatory working hour limits. Under this revision, the shoreside processor could still choose to provide an additional CDQ observer at the processing plant if the shoreside processor did not want its activities to be limited by the working hour limits for the vessel observer.

Table 1 shows all of the CDQ observer coverage requirements that will be in effect under 50 CFR 679.50 after this final rule becomes effective.

TABLE 1. REVISED CDQ OBSERVER COVERAGE REQUIREMENTS

| Category | CDQ Observer Coverage Requirements (effective in 2000) |
|---|---|
| Catcher, < 60 ft, any gear | none |
| Catcher, ≥ 60 ft, trawl gear | 1 CDQ observer |
| Catcher, ≥ 60 ft, nontrawl gear, Option 1[1] | 1 CDQ observer |
| Catcher, ≥ 60 ft, nontrawl gear, Option 2[2] | 1 lead CDQ observer |
| Catcher/processor, trawl and motherships | 1 lead CDQ observer and 1 CDQ observer |
| Catcher/processor, longline, pot | 1 lead CDQ observer and 1 CDQ observer |
| Shoreside processor[3], deliveries from vessels using trawl gear | 1 CDQ observer for each CDQ delivery |
| Shoreside processor, deliveries from vessels <60 ft using nontrawl gear and groundfish CDQ fishing | 1 CDQ observer for each CDQ delivery |
| Shoreside processor, deliveries from vessels <60 ft using nontrawl gear and halibut CDQ fishing | no observer required for delivery |
| Shoreside processor, deliveries from vessels using nontrawl gear, Option 1[1] | 1 CDQ observer for each CDQ delivery; may use vessel CDQ obs. under certain circumstances.[4] |
| Shoreside processor, deliveries from vessels using nontrawl gear, Option 2[2] | no CDQ observer required for delivery |

[1] Option 1 is a CDQ catch accounting option that requires the vessel operator to retain all groundfish CDQ and salmon PSQ and deliver it to a processor where it is sorted by species, weighed, and reported to NMFS.

[2] Option 2 is a CDQ catch accounting option where catch may be discarded at sea. Observer data is used for all catch accounting and the processor's reports of landed catch weight are not used as the basis for CDQ catch accounting.

[3] Includes stationary floating processors.

[4] Instead of having a separate observer for the shoreplant, the vessel observer may monitor sorting and weighing of CDQ delivery as long as working hour limitations for the vessel observer are not exceeded.

This final rule also makes a minor revision to the introductory paragraph of 50 CFR 679.50(c)(4). The current paragraph requires the owner or operator of a vessel engaged in CDQ fishing to comply with CDQ observer coverage requirements for each day the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. NMFS is removing the requirement that CDQ observers be onboard catcher/processors or motherships when they are being used only to transport CDQ catch. In some cases, processor vessels and motherships continue to transport CDQ catch onboard long after catching and/or processing of the CDQ catch has been completed. No need exists for a CDQ observer to be onboard solely to monitor the transport of processed product.

## Classification

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action, if adopted, would not have a significant impact on a substantial number of small entities. A summary of that certification follows:

The final rule would apply to the 21 catcher vessels greater than or equal to 60 ft LOA (18.3 m) and 10 shoreplants that participate in the CDQ fishery. The action would remove the gear-specific experience requirements for CDQ observers deployed in shoreplants and on some types of vessels, which would increase the number of observers qualified to be deployed in the CDQ fisheries. This increased flexibility would reduce the possibility that a qualified observer would not be available when a vessel or processor wants to participate in a CDQ fishery. This action would also allow a

shoreside plant taking CDQ deliveries from some non-trawl catcher vessels to provide an observer without CDQ observer-training, rather than a CDQ observer, and would reduce observer coverage levels under certain circumstances.

Based on the analysis presented in the Regulatory Impact Review prepared for this rule, NMFS estimates that this action will have a positive impact on the vessels and processors that will be directly impacted by the action and will have no negative impact on observer contractors. As far as NMFS is able to determine, this final rulemaking will not have a significant impact on a substantial number of small entities.

No comments were received on that certification and the basis for it has not changed. Accordingly, a regulatory flexibility analysis has not been prepared for this rule.

A copy of the RIR can be obtained from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 9, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraph (h)(1)(i)(E)(*4*) is removed, the first sentence of the introductory text in paragraph (c)(4) is revised, paragraph (c)(4)(v) is added, and paragraphs, (c)(4)(iv), and (d)(4) are revised to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2000.**

* * * * *

(c) * * *

(4) *Groundfish and halibut CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing or halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to transport (catcher vessels only), harvest, process, deliver or take delivery of CDQ or PSQ species. * * *

* * * * *

(iv) *Catcher vessel using trawl gear.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section aboard the vessel.

(v) Catcher vessel using nontrawl gear. A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear must meet the following observer coverage requirements:

(A) *Option 1.* If the vessel operator selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, then at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section must be aboard the vessel.

(B) *Option 2.* If the vessel operator selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting, then at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section must be aboard the vessel.

* * * * *

(d) * * *

(4) *Groundfish and halibut CDQ fisheries.*--(i) *CDQ deliveries requiring observer coverage.* Subject to paragraph (d)(4)(ii) of this section, each shoreside processor taking deliveries of groundfish or halibut CDQ must have at least one CDQ observer as described at paragraph (h)(1)(i)(D) of this section present at all times while CDQ is being received or processed.

(ii) *CDQ deliveries not requiring CDQ observer coverage.* A shoreside processor is not required to provide a CDQ observer for CDQ deliveries from the following vessels:

(A) Vessels less than 60 ft (18.3 m) LOA that are halibut CDQ fishing;

(B) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear that have selected Option 1 (as described at § 679.32(c)(2)(ii)(A)) for CDQ catch accounting, so long as the CDQ observer on the catcher vessel monitors the entire delivery without exceeding the working hour limitations described in paragraph (d)(4)(iii) of this section; and

(C) Vessels equal to or greater than 60 ft (18.3 m) LOA using nontrawl gear that have selected Option 2 (as described at § 679.32(c)(2)(ii)(B)) for CDQ catch accounting.

(iii) *Observer working hours.* The time required for the CDQ observer to complete sampling, data recording, and data communication duties may not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

[FR Doc. 00–29484 Filed 11–16–00; 8:45 am]

BILLING CODE: 3510–22 –S

# Proposed Rules

Federal Register
Vol. 65, No. 223
Friday, November 17, 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.

## FEDERAL TRADE COMMISSION

## 16 CFR Part 303

## Rules and Regulations Under the Textile Fiber Products Identification Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission (''Commission'') solicits comments as to whether to amend Rule 7 of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules,'' 16 CFR 303.7) to designate a new generic fiber name and establish a new generic fiber definition for a fiber manufactured by Cargill Dow, LLC (''Cargill Dow''), of Minnetonka, Minnesota. Cargill Dow suggested the name ''synterra'' for the fiber, which it described as polylactic acid or polylactide, and referred to as ''PLA.''

**DATES:** Comments will be accepted through January 29, 2001.

**ADDRESSES:** Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as ''16 CFR Part 303—Textile Rule 8 Comment—P948404.''

**FOR FURTHER INFORMATION CONTACT:** James G. Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580; (202) 326–3035, FAX: (202) 326–2190, <<jmills@ftc.gov>>.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required fiber content on labels. Rule 7 (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

Cargill Dow applied to the Commission on August 28, 2000 for a new fiber name and definition.[1] It stated that PLA fibers are synthetic but are derived from natural renewable resources (agricultural crops such as corn). It maintained that PLA can combine certain advantages of natural fibers with those of certain synthetic fibers. Cargill Dow said that, although it does not itself currently produce products made from Natureworks™ PLA fiber (the PLA fiber it currently manufactures), it does contract with others for the production of the fiber and sells the fiber to end users. Cargill Dow contended that its proprietary Natureworks™ PLA fiber, and PLA that may be made using alternative processes, have unique properties that, along with PLA's unique fundamental chemistry, differentiate PLA fibers from all other recognized and listed synthetic or natural fibers.

Cargill Dow explained that PLA's fundamental polymer chemistry allows control of certain fiber properties and makes the fiber suitable for a wide variety of technical textile fiber applications, especially apparel and performance apparel applications. Of most significance to consumers, Cargill Dow maintained, is that PLA fibers exhibit: (1) Low moisture absorption and high wicking, offering benefits for sports and performance apparel and products; (2) low flammability and smoke generation; (3) high resistance to ultra violet (UV) light, a benefit for performance apparel as well as outdoor furniture and furnishings applications; (4) a low index of refraction, which provides excellent color characteristics; and, (5) lower specific gravity, making PLA lighter in weight than other fibers. In addition to coming from an annually renewable resource base, it stated, PLA fibers are readily melt-spun, offering manufacturing advantages that will result in greater consumer choice.

Contending that the unique chemistry of fibers made from PLA is inadequately described under existing generic names listed in 16 CFR Part 303.7, Cargill Dow petitioned the Commission to establish the generic name ''synterra.'' After an initial analysis, the Commission announced, on October 30, 2000, that it had issued Cargill Dow the designation ''CD 0001'' for temporary use in identifying PLA fiber pending a final determination as to the merits of the application for a new generic name and definition. A final determination will be based on whether the record in this proceeding indicates that Cargill Dow meets the Commission's criteria for issuing new fiber names and definitions, as described in Part II, below.

### II. Invitation To Comment

The Commission is soliciting comment on Cargill Dow's application generally, and on whether the application meets the Commission's criteria for granting applications for new generic names.[2]

*First Criterion:* The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

*Second Criterion:* The fiber must be in active commercial use or such use must be immediately foreseen.

*Third Criterion:* The granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

The Commission notes that the repeat units of PLA are linked by ester groups, which means that PLA fiber is a polyester. The Commission agrees with the petitioner, however, that PLA fiber does not fit into the current definition for polyester in Rule 7. The Commission is considering three approaches to resolve this situation, and requests comment from the public on the relative merits of each:

[1] This petition and additional information that Cargill Dow submitted are on the rulemaking record of this proceeding. This material, as well as any comments that are filed in this proceeding, will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. Any comments that are filed will be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR Part 303, Matter No. P948404, ''Cargill Dow Generic Fiber Petition Rulemaking.'' The comments also may be viewed in electronic form on the Commission's website at <www.ftc.gov>.

[2] The Commission first announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, and on Jan. 6, 1998, 63 FR 447 and 63 FR 449.

1. Amend the Rule to broaden the current definition for polyester in section 7(c) of the Rule to include PLA fiber;

2. Amend the current definition for polyester in section 7(c) of the Rule by creating a separate subcategory and definition for PLA fiber within the polyester category; or,

3. Amend the Rule to create a new, separate category in Rule 7 for PLA fiber.

Before deciding whether to amend Rule 7, the Commission will consider any comments submitted to the Secretary of the Commission within the above-mentioned comment period.

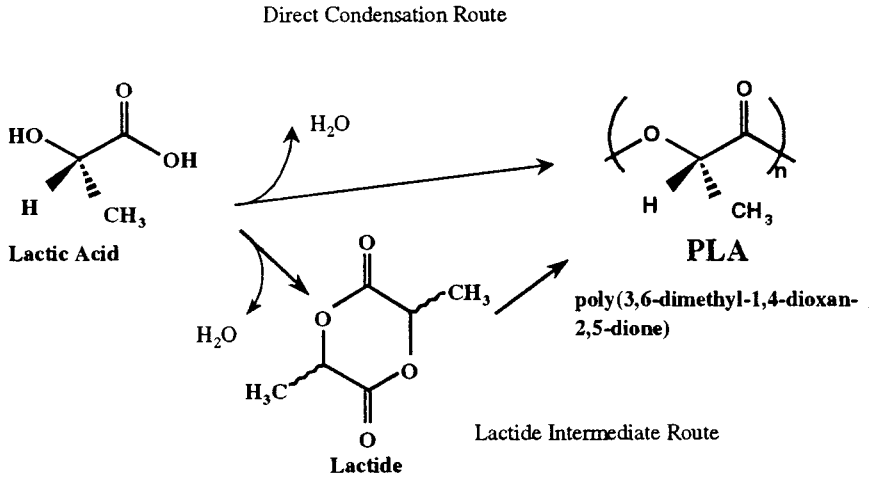
## III. Cargill Dow's Petition

### *A. Chemical Composition and Physical and Chemical Properties of PLA Fiber*

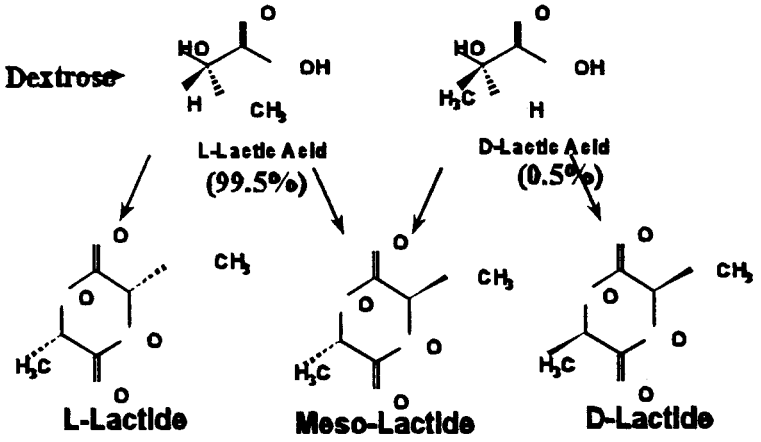
In its petition, Cargill Dow described in detail the fiber PLA. The following description from the petition is substantially verbatim:

1. Synterra fibers are typically made using lactic acid as the starting material for polymer manufacture. This is unique in that lactic acid comes from fermenting various sources of natural sugars. These sugars can come from a variety of annually renewable agricultural crops such as corn or sugar beets.

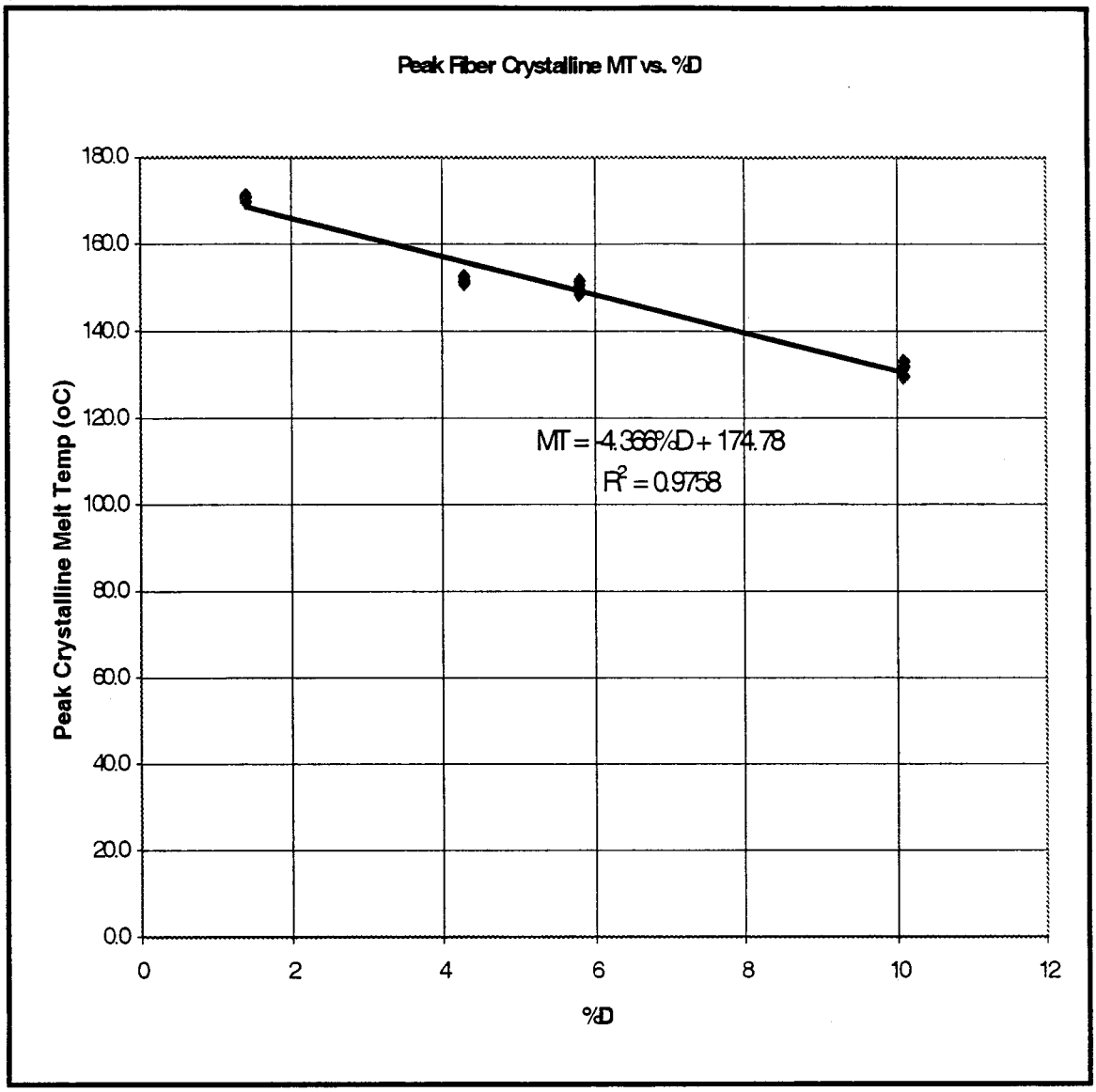
2. PLA used to make the fiber can be polylactic acid or polylactide. Although the lactide intermediate route, used by Cargill Dow, has proven most effective, direct condensation of lactic acid will also result in PLA. The latter route, however, results in a lower molecular weight polymer. Both routes allow for the development of PLA fibers that offer advantages to consumers explained more fully below (although the process used by CDP usually does so more readily), and are shown below:




3. PLA is also unique in that the lactic acid monomer exists in two optically active forms. Use of the lactide intermediate route results in three different lactide forms. These forms include D-lactide, L-lactide, or meso-lactide:




4. These different monomers, when polymerized, dictate the crystalline nature of the polymer. By controlling the ratio of D units in the polymer through polymerizing more D-lactide or meso-lactide, the amount of crystallinity the polymer is capable of being varied from a very high amount to none. As would be expected, this results in polymers with distinctly different properties. By controlling the level of the ''D'' units in the polymer chain, the resulting polymer and fiber melt temperature can be varied in the semi-crystalline polymers. For instance, the following graph gives the fiber peak crystalline melt temperatures for a range of different percent D polymers that were mechanically spun and drawn.




5. As a naturally-derived but synthetic product, synterra fibers exhibit properties some of which are similar to and some of which are different from many of the fibers commercially available today, including the various types of polyesters, nylons, acrylics and naturally occurring fibers such as cotton, wool, silk and rayon. See the table below, which compares several properties of fibers and fabrics against PLA. Importantly, the unique chemistry of PLA results in physical property differences such that existing fiber definitions do not fully or exactly describe PLA. Of likely significance to consumers is that PLA fibers are derived from a fully renewable natural resource, but offer many key advantages of synthetic fabrics as well.

| Fiber property | Nylon 6 | Acrylic | PET | PLA | Rayon | Cotton | Silk | Wool |
|---|---|---|---|---|---|---|---|---|
| Specific Gravity | 1.14 | 1.18 | 1.39 | 1.25 | 1.52 | 1.52 | 1.34 | 1.31 |
| Tm (°C) | 215–220 | −320 °C (Degrades) | 254–260 | 130–175 | None | None | None | None |
| Tenacity (g/d) | 5.5 | 4.0 | 6.0 | 6.0 | 2.5 | 4.0 | 4.0 | 1.6 |
| Elastic Recovery (5% strain). | 89 | 50 | 65 | 93 | 32 | 52 | 52 | 69 |
| Moisture regain (%) | 4.1 | 1–2 | 0.2–0.4 | 0.4–0.6 | 11 | 7.5 | 10 | 14–18 |
| Contact Angle (θ) | 70 | Not Measured | 82 | 76 | | | | |
| Wicking (L–W slope; higher slope, more wicking. | | Not Measured | 0.7–0.8 (no finish) | 6.3–7.5 (no finish); 19–26 (with finish) | | | | |
| Heat of Combustion (MJ/kg). | 31 | 31 | 23 | 19 | 17 | 17 | | 21 |

| Fiber property | Nylon 6 | Acrylic | PET | PLA | Rayon | Cotton | Silk | Wool |
|---|---|---|---|---|---|---|---|---|
| Flammability | Medium smoke; melts | Moderate flammability; melts | High smoke; burns 6 min after flame removed | Low smoke; burns 2 min after flame removed | Burns | Burns | Burns | Burns slowly; self-extinguishing |
| LOI (%) | 20–24 | 18 | 20–22 | 26 | 17–19 | 16–17 | | 24–25 |
| UV resistance | Poor | Excellent | % Change in Elong. at Peak=30 (100 hrs. xenon arc) | % Change in Elong. at Peak=0 (100 hrs. xenon arc) | Poor | Fair–Poor | Fair–Poor | Fair |
| Refractive Index | 1.52 | 1.50 | 1.54 | 1.45 | 1.52 | 1.53 | 1.54 | 1.54 |

For consumers, the interaction of PLA with water, including moisture regain, wicking and contact angle, another measure of interaction with moisture, is likely to be significant. PLA exhibits low moisture absorption (0.4–0.6% moisture regain), similar to polyester, but lower than nylon, acrylic and natural fibers. At the same time, the rate of wicking is higher than other fibers like PET, with a Lucas-Washburn slope of 6.3–7.5 for PLA, versus 0.7–0.8 for PET.

For applications in apparel, but especially in furnishings, PLA's favorable combustion characteristics, including low smoke generation and LOI attributes, offer advantages to consumers. PLA polymer is an aliphatic chain, and thus burns cleanly, with only a small amount of faint, white smoke, as testing on PLA fibers demonstrates, per the table above. This means that in applications where especially stringent fire performance characteristics are required (necessitating fire retardant treatment even with PLA), reduced amounts of fire retardants will likely be needed relative to other fibers. This is an added environmental benefit.

Also, the unique modulus of PLA fiber allows fabrics to be made which are stiffer and more shape retaining than nylon, but softer, with better drape and hand than polyester. Furthermore, Natureworks™ PLA fibers exhibit a unique index of refraction, which may allow very lustrous fabrics to be made and dyed with very deep color. Excellent resistance to UV light is another significant differentiating property, as is elastic recovery, which is considerably higher than most other fibers.

6. PLA can be processed on conventional fiber equipment. PLA fibers have been manufactured and used in continuous filament, staple, and several nonwoven processes, as well as via new technologies such as high speed spinning and microdenier fibers. High speed spinning can be used to produce lower denier fibers and to produce more fiber per unit time, increasing productivity, which should ultimately offer economic benefits to consumers. Lower deniers and microdenier technologies have been increasing in apparel markets to give better hand and softer feel. Because of the unique properties of fibers made from Natureworks™ PLA, these fibers can and are being used in a broad range of applications. Sports and performance apparel, fashion apparel and general apparel, technical textiles, along with nonwovens are applications that best utilize the unique properties described above.

Cargill Dow also provided additional information about the launderability and drycleanability of PLA fiber, which appears in detail on the public record, relevant parts of which appear substantially verbatim as follows:

## Summary of Fabric Cleaning Results

### Summary of PLA Fabric Cleaning

- At cotton sturdy cleaning temperatures, both the drycleaned and laundered samples show high shrinkage in both directions after one cycle, but held relatively constant up to the 50th drycleaning and 100th laundering. This was due to the fabric not being heat set.
- The bursting strength dropped off slightly at the 75th laundry measurement and the 25th drycleaning measurement. The drycleaned samples show higher bursting strength as compared to the laundered samples.
- The fabric weight of the laundered and drycleaned samples increased after the first cleaning. This is attributed to the shrinkage of the fabric. The weight held relatively constant after the first cleanings; and after the 25th cycle for drycleaning.
- The drycleaned samples exhibited less wrinkling and puckering after cleaning.
- Minimal change in molecular weight occurred after the laundry and dry-cleaning regimes, indicating minimal hydrolytic degradation.

To verify that the initial dimensional change was due to not being heat set, Cargill Dow repeated the testing with an interlocking knit fabric, made from Flat Drawn Yarn which was heat set and dyed, prior to testing. Results were as contained in the figure, below:

**Washing and Drycleaning Results on dyed filament fabric**

Textile Testing Laboratory Results

**Home Washing (AATCC 135) and Drycleaning (AATCC 158)**

Testing was conducted on **100% PLA light blue continuous filament**, interlocking stitch knit fabric, knitted on a double circular knitting machine.

| Home Washing | | Original | 1xHW | 50xHW |
|---|---|---|---|---|
| Shrinkage | Wales | | 0.7 | 0.7 |
| | Courses | | 1 | 1.3 |
| Appearance* | | | 3 | 4 |
| Bursting Strength (lbf) | | 102 | 113 | 114 |
| Weight (oz/yd$^2$) | | 15.1 | 16.7 | 18.3 |
| Molecular Weight** | Mn | 61500 | 65796 | 63645 |
| (Dalton) | Mw | 125540 | 128293 | 123370 |

*denotes Class 5.0 = no wrinkling and/or puckering; 1.0 = severe wrinkling and/or puckering
**via GPC, relative to polystyrene standards; Confidence Intervals @ 95% = Mn +/- 6300, Mw +/- 8900

| Drycleaning | | Original | 1xDC | 25xDC |
|---|---|---|---|---|
| Shrinkage | Wales | | 0.3 | 0.3 |
| | Courses | | 1.7 | 1 |
| Appearance* | | | 5 | 5 |
| Bursting Strength (lbf) | | 102 | 111 | 110 |
| Weight (oz/yd$^2$) | | 15.1 | 16.6 | 17.6 |
| Molecular Weight** | Mn | 61500 | 63336 | 63955 |
| (Dalton) | Mw | 125540 | 126108 | 126295 |

*denotes Class 5.0 = no wrinkling and/or puckering; 1.0 = severe wrinkling and/or puckering
**via GPC, relative to polystyrene standards; Confidence Intervals @ 95% = Mn +/- 6300, Mw +/- 8900

The results suggest that fabrics made with fibers from PLA are very stable to laundering and drycleaning. The fabrics exhibited very little shrinkage during cleaning, since they were thermally stable prior to testing.[3]

In addition to suggesting the generic name ''synterra,'' Cargill Down proposed the following definition for PLA fiber.

*synterra:* A manufactured fiber in which the polymer is produced either (a) by the condensation of lactic acid or (b) by ring opening of the cyclic dimer, lactide, in both cases where at least 85% of the primary component is derived from a renewable resource as an integral part of the polymer chain.

*B. Commercial Uses of PLA*

Addressing the extent to which its fiber has been put into active commercial use, Cargill Dow stated in its petition:

Fibers produced from Natureworks™ PLA have been made * * * into finished goods that are ready to commercialize, and several are in test markets. Cargill Dow is in the process of building a second polymer plant in Blair, Nebraska, capable of producing 140,000 Metric Tons, or approximately 30,000,000 pounds per year of PLA polymer. Cargill Dow has customer commitments in fiber applications to purchase or use a significant portion of this polymer capacity, and anticipates that 50% or more of the plant's capacity to be sold as fiber-grade polymer. This plant is under construction and is expected to be commissioned in the fourth quarter of 2001.

*C. Importance of New Generic Name to the Public*

Cargill Dow argued that granting the petition would facilitate the use of this fiber in commercial consumer applications. It also stated that a new generic term (like synterra) would help consumers identify products made from PLA. Thus, Cargill Dow maintained that a new generic name would be important to the public at large, not just knowledgeable professionals.

**IV. Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this proposal

[3] Cargill Dow did not evaluate wash or dry clean color fastness in either of the tests above. However, Cargill Dow stated that BASF has been developing the dyeing process, using disperse dyes on PLA. As part of its work, BASF studied colorfastness in washing. This information can be obtained from Cargill Dow's website, at the following address: <<http://www.cdpoly.com/images/BASF_Dye_Study.pdf>> Basically, BASF has identified dye combinations which give standard and high colorfastness to washing with fabrics made from these fibers. The launderability of PLA fibers was also examined (among other qualities) in a study by James Lunt, Ph.D., and Andrew L. Shafer, at Cargill Dow Polymers, LLC, entitled Polylactic Acid Polymers from Corn; Potential Applications in the Textiles Industry (also available at Cargill Dow's website.

because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion will respect to the proposed amendment because the amendment would impose no additional obligations, penalties or costs. Ten amendments simply would allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current names and definitions. The amendment would impose no additional labeling requirements.

To ensure that no substantial economic impact is being overlooked, however, the Commission requests public comment on the effect of the proposed amendment on costs, profits, and competitiveness of, and employment in, small entities. After receiving public comment, the Commission will decide whether preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities.

## V. Paperwork Reduction Act

This proposed amendment does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (PL 104–13, 109 Stat. 163) and its implementing regulations. (5 CFR 1320 *et seq.*) The collection of information imposed by the procedures for establishing generic names (16 CFR 303.8) has been submitted to OMB and has been assigned control number 3084–0101.

## List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

**Authority:** Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–29468 Filed 11–16–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 001113318-0318-01; I.D. 110200D]**

**RIN 0648-AO75**

## Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Incidental Catch

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); request for comments.

**SUMMARY:** NMFS intends to undertake rulemaking to reduce the level of Atlantic bluefin tuna (BFT) that is discarded dead by vessels in the pelagic longline fishery, and issues this ANPR to request comments on potential changes to the Atlantic tuna regulations that could reduce the level of dead discards of BFT including the adjustment of target catch requirements for landing incidental catch. The level of allowed discards needs to be reduced in order to decrease the waste of valuable bycatch.

**DATES:** Written comments on this ANPR must be received on or before December 14, 2000.

**ADDRESSES:** Written comments should be addressed to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Pat Scida, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** The Atlantic pelagic longline fishery, which commonly targets swordfish, sharks, and yellowfin and bigeye tunas, also occasionally catches BFT incidental to these other fisheries. Because the U.S. longline fleet has not historically targeted BFT, the portion of the U.S. national BFT quota allocated to the longline category has always been intended to account for incidental catch only. Accordingly, under current BFT regulations, vessels permitted in the Atlantic Tunas Longline category are permitted to retain and land BFT caught with pelagic longline gear only if a specific minimum level of other fish species are landed from the same trip. While the regulations pertaining to landing incidental BFT catch have been adjusted on several occasions, the pelagic longline industry continues to comment that the target catch requirements are overly restrictive and result in unnecessary dead discards.

### Background

The history of U.S. regulatory activity and public comment regarding this issue dates back to the early 1980's. A full description of this history is provided in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) chapter 3, section 3.5.3 ''Management Measures to Address Bycatch Problems.''

In 1998, the International Commission for the Conservation of Atlantic Tunas (ICCAT), in its recommendation on western BFT rebuilding, required that nations minimize dead discards of BFT to the extent practicable and established a dead discard allowance of 79 metric tons (mt) for western BFT, 68 mt of which was allocated to the United States. The 1998 ICCAT recommendation also provided that, if a nation exceeds its dead discard allowance in one year, that nation must deduct the excess from its following year's landing quota. If the actual amount of dead discards is less than the allowance, one-half of the difference may be added to the allocation of catch that can be retained. Dead discards of BFT are reported to ICCAT by NMFS, along with landings data, and are summarized in the U.S. National Report to ICCAT.

The final rule that implemented the HMS FMP addressed the dead discard issue by establishing a time/area closure for the use of pelagic longline gear in the Northwestern Atlantic from 39° to 40° N. lat. and 68° to 74° W. long. during the month of June. This closed area was chosen to meet the goal of minimizing BFT dead discards while having the least economic impact on the directed pelagic longline fisheries. Since NMFS first implemented BFT incidental catch regulations, the agency has received public comment and inquiries regarding the target catch requirements to retain incidental catch of BFT and the effectiveness of the regulations in avoiding dead discards. These comments have continued after the publication of the HMS FMP.

### Potential Adjustments

Several reviews of landings, logbook, and observer data have been conducted in recent years regarding the pelagic longline fisheries interaction with BFT. Observer data from longline trips (from 1991 to 1994) indicate that two or fewer BFT were hooked on 91 percent of all

observed trips. Longline landings information for 1998 and 1999 indicate that median values for landed catch (not including BFT) are approximately 3,000 lb ( 1,361 kg) for trips made in the months of January through April, and 3,800 lb (1,724 kg) for trips made in May through December, in fisheries south of 34° N. lat.; and 3,700 lb (1,679 kg) for trips made throughout the year in fisheries north of 34° N. lat. For the same time period, 75 percent of the trips had a landed catch (other than BFT) of approximately 1,350 lb (613 kg) for trips made in the months of January through April, and 1,650 lb (749 kg) for trips made in May through December, in fisheries south of 34° N. lat; and 1,600 (726 kg) for trips made throughout the year in fisheries north of 34° N. lat.

Based on current landings and dead discard information, NMFS could consider several possible adjustments. One approach could be to undertake a comprehensive review and adjust target catch requirements, geographic location, and seasonal subdivisions. An alternative could be to adjust the target catch requirements while maintaining the current geographic and southern area seasonal subdivision. For example, in the Longline south subcategory, from January through April, one fish per vessel per fishing trip with at least 1,500 lb (680 kg) of target catch, or two fish per vessel per trip with at least 4,500 lb (2,040 kg) of target catch; from May through December, one fish per vessel per fishing trip with at least 3,500 lb (1,588 kg) of target catch, or two fish per vessel per trip with at least 6,000 lb (2,722 kg) of target catch. In the Longline north subcategory, one fish per vessel per fishing trip with at least 3,500 lb (1,588 kg), or two fish per vessel per trip, with at least 6,000 lb (2,722 kg) of target catch. Under this alternative, another option could be to adjust only the percent target catch requirement for the Northern area (e.g., 5 or 8 percent versus two percent) and to maintain the current target catch requirements, by season, for the south.

Another alternative could be to institute one target catch requirement (either a percent or a fixed number of BFT) coastwide regardless of season. For example, one BFT per vessel per fishing trip with at least 1,500 lb (680 kg) of target catch, or two fish per vessel per trip with at least 4,000 lb (1,815 kg) of target catch, or one BFT per trip, so long as other targeted species are landed. Under this alternative, another option could be to apply a percent target catch requirement coastwide.

## Request for Comments

NMFS requests comments on possible changes to the BFT landings allowances as outlined above or on alternative means of reducing dead discards of BFT in the pelagic longline fisheries. Comments received by the due date will be considered in drafting any proposed changes to the Atlantic tuna regulations.

**Authority:** 16 U.S.C.971 *et seq.* and 1801 *et seq.*

Dated: November 13, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–29473 Filed 11–14–00; 3:22 pm]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 65, No. 223

Friday, November 17, 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

### Office of the Secretary

### Commission on 21st Century Production Agriculture; Notice of Meeting

**SUMMARY:** The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the meetings in November/December of the Commission on 21st Century Production Agriculture. The purpose of the meetings on November 30 and December 1, 2000 is a working session to address issues regarding agricultural policy initiatives to be included in the Commission report. These meetings are open to the public.

**PLACE, DATE, AND TIME OF MEETING:** The meetings will be held November 30, 2000, from 8:30 pm–5:00 pm, in Room 108–A, Whitten Building and December 1, 2000, from 8:30 am to 5:00 pm, in Room 221–A, Whitten Building, U.S. Department of Agriculture.

**FOR FURTHER INFORMATION CONTACT:** Mickey Paggi (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: November 13, 2000.

**Keith J. Collins,**

*Chief Economist.*

[FR Doc. 00–29441 Filed 11–16–00; 8:45am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers to be Used for Publication of Legal Notice of Appealable Decisions for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice and correction.

**SUMMARY:** Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 18, 2000, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

**DATES:** Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–4867.

**SUPPLEMENTARY INFORMATION:** Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

**Southern Region**

Regional Forester Decisions: Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico. *Atlanta Journal,* published daily in Atlanta, GA

**Southern Region**

Regional Forester Decisions: Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

**National Forests in Alabama, Alabama**

Forest Supervisor Decisions: *Montgomery Advertiser,* published daily in Montgomery, Al

District Ranger Decisions:

- Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL
- Conecuh Ranger District: *The Andalusia Star News*, published daily (Tuesday through Saturday) in Andalusia, AL
- Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL
- Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
- Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
- Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

**Caribbean National Forest, Puerto Rico**

Forest Supervisor Decisions:

- *El Nuevo Dia*, published daily in Spanish in San Juan, PR
- *San Juan Star*, published daily in English in San Juan, PR

**Chattahoochee-Oconee National Forest, Georgia**

Forest Supervisor Decisions: *The Times*, published daily in Gainesville, GA
District Ranger Decisions:
Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA
Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA
Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA
Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA
*Chieftain & Toccoa Record,* published twice weekly (Tuesday & Friday) in Toccoa, GA
*White County News Telegraph*, published weekly (Thursday) in Cleveland, GA
*The Dahlonega Nuggett*, published weekly (Thursday) in Dahlonega, GA
Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA
Oconee Ranger District: *Eatonton Messenger*, published weekly (Thursday) in Eatonton, GA

**Cherokee National Forest, Tennessee**

Forest Supervisor Decisions:
*Knoxville News Sentinel*, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
*Johnson City Press*, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)
District Ranger Decisions:
Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
Tellico-Hiwassee Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
Nolichucky-Unaka Ranger District: *Johnson City Press* published daily in Johnson City, TN
Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

**Daniel Boone National Forest, Kentucky**

Forest Supervisor Decisions: *Lexington Herald-Leader*, published daily in Lexington, KY
District Ranger Decisions:
Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

**National Forests in Florida, Florida**

Forest Supervisor Decisions: *The Tallahassee Democrat*, published daily in Tallahassee, FL
District Ranger Decisions:
Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter*, published daily (Monday-Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

**Frances Marion & Sumter National Forest, South Carolina**

Forest Supervisor Decisions: *The State*, published daily in Columbia, SC
District Ranger Decisions
Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *The Daily Journal,* published daily in Seneca, SC
Long Cane Ranger District: *The Augusta Chornicle,* published daily in Augusta, GA
Wambaw Ranger district: *Post and Courier,* published daily in Charleston, SC
Witherbee Ranger district: *Post and Courier,* published daily in Charleston, SC

**George Washington and Jefferson National Forests, Virginia**

Forest Supervisor Decisions: *Roanoke Times,* published daily in Roanoke, VA
District Ranger Decisions:
Lee Ranger District: *Shenandah Valley Herald,* published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *Roanoke Times,* published daily in Roanoke, VA
James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader,* published daily in Staunton, VA
Dry River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times,* published daily in Roanoke, VA *Monroe Watchman,* published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times and Monroe Watchman*.)
Glenwood Ranger District: *Roanoke Times,* published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times,* published daily in Roanoke, VA
Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News,* published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise,* published bi-weekly (Wednesday and Saturday) in Wytheville, VA

**Kisatchie National Forest, Louisiana**

Forest Supervisor Decisions: *The Town Talk,* published daily in Alexandria, LA
District Ranger Decisions:
Caney Ranger District: *Minden Press Herald,* published daily in Minden, LA
*Homer Guardian Journal,* published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *The Town Talk,* published daily in Alexandria, LA
Calcasier Ranger District:
Rapides Parish Area—*The Town Talk,* published daily in Alexandria, LA
Vernon Parish Area—*Leesville Leader,* published daily in Leesville, LA
Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA

**Land Between the Lakes National Recreation Area, Kentucky and Tennessee**

*The Paducah Sun,* published daily in Paducah, KY

**National Forests in Mississippi, Mississippi**

Forest Supervisor Decisions: *Clarion-Ledger,* published daily in Jackson, MS
District Ranger Decisions:
Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
De Soto Ranger District: *Clarion Ledger,* published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS

**National Forests in North Carolina, North Carolina**

Forest Supervisor Decisions: *The Asheville Citizen-Times,* published daily in Asheville, NC
District Ranger Decisions:
Appalachian Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal,* published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News,* published daily in Marion, NC
Highlands Ranger District: *The Highlander,* published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC
Unwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press,* published bi-weekly (Wednesday and Friday) in Franklin, NC

**Ouachita National Forest, Arkansas, Oklahoma**

Forest Supervisor Decisions: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
District Ranger Decisions:
Caddo Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World,* published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World,* published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World,* published daily in Tulsa, OK

**Ozark-St. Francis National Forest: Arkansas**

Forest Supervisor Decisions: *The Courier,* published daily (Tuesday through Sunday) in Russellville, AR

*District Ranger Decisions:*

Sylamore Ranger District: *Stone County Leader,* published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times,* published weekly in Jasper, AR
Bayou Ranger District: *The Courier,* published daily (Tuesday through Sunday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World,* published daily (Sunday through Friday) in Helena, AR

**National Forests and Grasslands in Texas, Texas**

Forest Supervisor Decisions: *The Lufkin Daily News,* published daily in Lufkin, TX
District Ranger Decisions:
Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sam Houston National Forest: *The Courier,* published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle,* published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 18, 2000, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

**Chattahoochee-Oconee National Forest, Georgia**

District Ranger Decisions:
Oconee Ranger District:
Change:
*Monticello News* to *Eatonton Messenger,* published weekly (Thursday) in Eatonton, GA

**Kisatchie National Forest, Louisiana**

District Ranger Decisions:
Calcaseiu Ranger District:
Clarify:
Rapides Parish Area—*The Town Talk,* published in Alexandria, LA
Add:
Vernon Parish Area—*Leesville Leader,* published daily in Leesville, LA

Dated: November 7, 2000.

**David G. Holland,**

*Deputy Regional Forester.*

[FR Doc. 00–29122 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Dry Fork Vegetation Restoration EIS—Lewis and Clark National Forest

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement on a proposal to treat vegetation on approximately 4,100 acres in Cascade and Judith Basin Counties, Montana. An assessment titled Dry Fork Vegetation and Recreation Restoration Environmental Assessment (EA) was completed in August 1999 and a Decision Notice/Finding of No Significant Impact was released on June 15, 2000. On appeal, a portion of the decision dealing with vegetative restoration was reversed. In order to further the purposes of the National Environmental Policy Act and to provide additional disclosure, the analysis will now be revisited and documented in an Environmental Impact Statement (EIS).

**DATES:** Comments concerning the scope of the analysis, issues, the alternatives, and evaluation of alternatives were received during development of the EA. Although no formal scoping period is proposed for this EIS, comments will be accepted and an opportunity to comment on the draft EIS will be provided.

**ADDRESSES:** Send written comments to Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, MT 59403. Electronic mail may be sent to comment/rl lewisclark@fs.fed.us.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Scheer, EIS Team Leader, (406) 791–7700.

**SUPPLEMENTARY INFORMATION:** The Forest Service proposes to treat vegetation on approximately 4,100 acres in the Dry Fork of Belt Creek drainage on the Kings Hill Ranger District of the Lewis and Clark National Forest. The entire project area covers about 40,700 acres in the western portion of the Little Belt Mountains. The purpose of the proposed action is to move the condition of the area's forest and grasslands in a direction more closely approximated under natural conditions in which fire succession played a larger role. In addition, the proposed action will reduce the risk of large wildfire by reducing fuel accumulation. The previous EA considered, in detail, five alternatives for vegetative treatment. This EIS will include those alternatives, but will replace Alternative 5 in the EA with the modified alternative previously identified for selection in the decision notice. The alternatives evaluate a variety of treatment methods, including timber harvest, prescribed burning, road construction or reconstruction, and road closure to address issues and concerns in the project area.

*Decisions To Be Made:* The Forest Supervisor will decide whether and where vegetative treatment activities would take place in the project area. He will decide the number of acres, if any, on which treatment would take place and the types of treatment methods to be used. He will decide when any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Lewis and Clark Forest Plan.

*Responsible Official:* Rick Prausa, Forest Supervisor, is the Responsible Official for making the decision to implement any of the alternatives evaluated. He will document his decision and rationale in a Record of Decision.

*Preliminary Issues:* Issues associated with vegetative treatments that were identified during scoping and development of the Environmental Assessment include impacts of proposed activities on wildlife and fish species and their habitat, soil resources, water quality and water yield, and forest health.

*Public Involvement, Rationale, and Public Meetings:* Initial scoping for this project began in April 1998. A letter was sent to 376 individuals requesting comment on the proposed action. Public participation, including public meetings, field trips, and community involvement, occurred throughout the development of the EA. Comments were received on the EA and an opportunity provided for appeal of the decision. A portion of the decision resulting from the EA was reversed on appeal. As scoping on this proposal has already taken place during development of the EA, no formal scoping period or public meetings on the proposal are being considered at this time, however, public participation in this analysis is welcome at any time. Documenting the analysis in an Environmental Impact Statement provides an opportunity to strengthen the analysis and allow for additional public review and comment. A 45-day review period for comments on the Draft EIS will be provided. Comments received will be considered and included in documentation of the Final EIS. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service has sought and will continue to seek information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action.

*Electronic Access and Filing Addresses:* Comments may be sent by electronic mail (e-mail) to comment/r1 lewisclark@fs.fed.us. Please reference the Dry Fork Vegetation Restoration EIS on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

*Estimated Dates for Filing:* The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by March, 2001. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences of the action, as well as those pertaining to applicable laws, regulations, and policies. These will be considered in making a decision regarding the proposal.

*The Reviewers Obligation To Comment:* The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* versus *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

Dated: October 11, 2000.

**Robin Strathy,**

*Acting Lewis and Clark Forest Supervisor.*

[FR Doc. 00–29476 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Opal Creek Scenic Recreation Area (SRA) Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, December 11, 2000. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Public Law 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the December 11 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Williamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: November 13, 2000.

**Y Robert Iwamoto,**

*Deputy Forest Supervisor.*

[FR Doc. 00–29455 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### South Texas Electric Cooperative, Inc.; Notice of Intent to Hold A Public Workshop and Prepare An Environmental Assessment

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of intent to hold a public workshop and prepare an environmental assessment.

**SUMMARY:** The Rural Utilities Service (RUS) intends to hold a public scoping meeting/workshop and prepare an environmental assessment (EA) in connection with possible impacts related to the construction and operation of a combined cycle combustion turbine generation facility. The project is proposed by South Texas Electric Cooperative (STEC), of Nursery, Texas and Medina Electric Cooperative, Inc., of Victoria, Texas. RUS may provide financing assistance for the project. RUS will conduct a public scoping meeting/workshop at the Sam Rayburn Generating Plant Pavilion, which is located three miles west of Nursery, Texas on FM 447. The meeting/workshop will be held on Wednesday, December 6, 2000, from 6:00 p.m. until 8:00 p.m.

**FOR FUTHER INFORMATION CONTACT:** Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: or Joe Araiza, Project Manager, Burns and McDonnell, 1776 Yorktown, Suite 840, Houston, Texas 77056, telephone: (713) 622–0224 or e-mail: jaraiza@burnsmcd.com.

**SUPPLEMENTARY INFORMATION:** STEC and Medina are proposing to construct a 3-on-1 LM6000 combined-cycle combustion turbine 186 MW generation plant available for commercial dispatch in January 2003. The preferred site is the existing Sam Rayburn Plant, which is located in Nursery, Texas. The existing plant infrastructure will be utilized for this new generation addition including existing gas lines, cooling water ponds and switchyard.

Alternatives to be considered by RUS include no action, load management and energy conservation, purchase power, alternative generators and alternative sites.

Comments regarding the proposed project may be submitted in writing at the public meeting/workshop or in writing no later than January 5, 2001, to RUS at the address provided above.

An environmental assessment (EA) will be prepared for the proposed project. Based on a review of the Environmental Assessment and other relevant information, RUS will determine if the preparation of an environmental impact statement is necessary. Should RUS determine that the preparation of an environmental impact statement is not necessary, it will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS's Environmental Policies and Procedures.

Dated: November 13, 2000.

**Glendon D. Deal,**

*Acting Director, Engineering and Environmental Staff.*

[FR Doc. 00–29483 Filed 11–16–00; 8:45 am]

BILLING CODE 3410–15–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 18, 2000.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

## Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Services*

Customization & Distribution of Air Force Special Promotion Items

HQ Air Force Recruiting Service, 550 D Street West, Suite 1, Randolph AFB, Texas.

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Grounds Maintenance

Department of Energy, Nevada Support Facility, 232 Energy Way, North Las Vegas, Nevada.

NPA: Positive Access, Inc., Las Vegas, Nevada.

Janitorial/Custodial

Depot Maintenance Industrial Fund, Tinker Air Force Base, Oklahoma.

NPA: Oklahoma County Council for Mentally Retarded Citizens, Inc., Oklahoma City, Oklahoma.

## Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

*Commodities*

Arming Adapter, Self Adjusting

1325–01–158–8635
1325–01–159–8083

Air Freshener Deodorant, General Purpose

6840–00–932–4692

Envelope, Wallet

7530–00–281–4844
7530–00–281–4846

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 00–29494 Filed 11–16–00; 8:45 am]

BILLING CODE 6353–01–P

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# COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List; Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletion from the procurement list.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodity previously furnished by such agencies.

**EFFECTIVE DATE:** December 18, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On May 26, July 7, and September 22 and 29, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 34145, 41941, 57313 and 58505) of proposed additions to and deletion from the Procurement List:

## Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

*Commodity*

Cloth, Cleaning
7920–01–004–7847

*Services*

Grounds Maintenance, Family Housing and Naval Hospital, Marine Corps Base, Camp Lejeune, North Carolina

Janitorial/Custodial, Bureau of Land Management, Carlsbad Field Office, 620 East Green Street, Carlsbad, New Mexico

Operation of Individual Equipment Element Store, Department of the Air Force, 125 Bennett Avenue, Hurlburt Field, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Deletion**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodity is hereby deleted from the Procurement List:

*Commodity*

Door Knob Conversion Kit
5340–01–394–0237
5340–01–394–0238
5340–01–394–0239
5340–01–394–0240
5340–01–394–0241
5340–01–394–0242
5340–01–394–3874

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 00–29495 Filed 11–16–00; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111300B]**

## Mid-Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee will hold a public meeting.

**DATES:** The meeting will be held on Monday, December 4, 2000, beginning at 10:00 a.m. with the Summer Flounder Monitoring Committee, followed by the Scup Monitoring Committee and the Black Sea Bass Monitoring Committee.

**ADDRESSES:** The meeting will be held at the Sheraton International Airport, 7032 Elm Road, BWI Airport, Baltimore, MD 21240, telephone 410-859-3300.

*Council Address*: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302-674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to recommend the 2001 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fisheries Conservation and Management Act, provided the public has been notified of the Committee's intent to take

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis (see **ADDRESSES**) at least 5 days prior to the meeting date. final action to address the emergency.

Dated: November 13, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–29487 Filed 11–16–00; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 111300C]**

## New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee. Recommendations from the Committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Wednesday, December 6, 2000, beginning at 9:30 a.m. through Thursday, December 7, 2000, beginning at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone (781) 245-9300.

*Council address*: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465-0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The Committee will continue to work on the development of a collaborative research program for New England fisheries to address the next round of funds appropriated by Congress for 2001.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of

the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 13, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–29486 Filed 11–16–00; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111300A]**

### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

**DATES:** The meetings will be held December 4 through 12, 2000, in Anchorage, Alaska. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, Alaska. Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** North Pacific Fishery Management Council staff, telephone: 907-271-2809.

**SUPPLEMENTARY INFORMATION:**

**Meeting Dates, Times and Agendas**

*Monday, December 4 through Friday, December 8, 2000, 8 a.m.*

The agenda for the Advisory Panel will mirror that of the Council listed below, with the exception of the reports under Item 1, and Item 10, appointments to committees.

*Monday, December 4 through Thursday, December 7, 2000 8 a.m.*

The Scientific and Statistical Committee (SSC) will address the following items on the Council agenda:

1. Steller sea lion issues.
2. Halibut Charter Individual Fishing Quota report.
3. All items under Groundfish Management in Council agenda Item 8.

*Wednesday, December 6 through Tuesday, December 12, 2000, 8 a.m.*

The agenda for the Council's plenary session will include the following issues:

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Department of Fish and Game.
(c) NMFS Management Report.
(d) Enforcement and Surveillance reports by NMFS and the Coast Guard.
(e) U.S. Fish and Wildlife report on sea otters.
(f) International Pacific Halibut Commission report on halibut quotas and discard mortality rates.
2. *Halibut Subsistence.* Review action taken in October, particularly the inclusion of Adak, Alaska in the list of eligible communities.
3. *Crab Rationalization.* Discuss possible alternatives and provide direction to staff for further development.
4. *Essential Fish Habitat/Habitat Areas of Particular Concern.* Status report and discussion of the stakeholder process.
5. *Halibut Charter IFQ Program.* Review corrected data and receive progress report on analysis.
6. *Steller Sea Lion Issues.* Review biological opinion and associated Steller sea lion protective measures and take action as appropriate.
7. American Fisheries Act:
(a) Review preliminary cooperative performance report.
(b) Industry report on Pacific cod sideboard issues.
8. Groundfish Management:
(a) Review Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Stock Assessment and Fishery Evaluation Reports for the 2001 groundfish fisheries.
(b) Provide recommendations for catch and bycatch specifications for the 2001 BSAI and GOA groundfish fisheries.
(c) Discuss BSAI Pacific cod pot gear suballocations; develop problem statement and provide direction to staff for analysis.
9. Staff Tasking:
(a) Industry and staff reports on potential salmon bycatch measures.
(b) Discussion and direction for Report to Congress on the effects of the American Fisheries Act.
(c) Review overall project tasking and provide direction to staff.
(d) Announcement of appointments to the Advisory Panel and SSC for 2001.

*Sunday, December 10, 2000, 12 p.m.--Executive Session (This session is not open to the public.)*

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907-271-2809 at least 5 days prior to the meeting dates.

Dated: November 13, 2000.

**Richard W. Surdi**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–29485 Filed 11–16–00; 8:45 am]

**BILLING CODE: 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 13, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 67253, published on December 1, 1999.

**Richard B. Steinkamp,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 13, 2000

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group I | |
| 200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group. | 246,330,442 square meters equivalent. |
| Group II | |
| 237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group. | 886,682,799 square meters equivalent. |
| Sublevels in Group II | |
| 359(1) (coveralls, overalls and jumpsuits). | 680,524 kilograms. |
| 659(1) (coveralls, overalls and jumpsuits). | 731,366 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–29489 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 13, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

**Richard B. Steinkamp,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 13, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC*

*20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 219 | 66,589,672 square meters. |
| 313 | 50,310,018 square meters. |
| 314 | 9,972,734 square meters. |
| 315 | 18,315,636 square meters. |
| 317 | 25,551,660 square meters. |
| 334/634 | 185,114 dozen. |
| 335/635 | 754,089 dozen. |
| 342/642 | 1,708,866 dozen. |
| 345 | 248,589 dozen. |
| 369–S [2] | 830,219 kilograms. |
| 641 | 1,792,427 dozen. |
| 647/648 | 900,145 dozen. |
| Group II | |
| 200, 201, 220–227, 237, 239pt. [3], 300, 301, 331–333, 350, 352, 359pt. [4], 360–362, 600–604, 606 [5], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group. | 162,671,041 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 359pt.: all HTS numbers except 6406.99.1550.

[5] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–29488 Filed 11–16–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

November 13, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

**Richard B. Steinkamp,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 13, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 411,971 dozen. |
| 314 | 6,150,137 square meters. |
| 331/631 | 4,123,332 dozen pairs. |
| 333/633 | 77,549 dozen. |
| 334/634 | 908,759 dozen. |
| 335/835 | 399,854 dozen. |
| 336/636/836 | 598,572 dozen. |
| 338/339 | 1,817,521 dozen. |
| 340/640 | 1,574,241 dozen. |
| 341/641 | 2,591,292 dozen of which not more than 1,727,528 dozen shall be in Category 341 and not more than 1,727,528 dozen shall be in Category 641. |
| 342/642/842 | 945,110 dozen. |
| 345/845 | 244,763 dozen. |
| 347/348/847 | 1,465,842 dozen. |
| 350/650 | 169,634 dozen. |
| 351/651 | 469,849 dozen. |
| 352/652 | 1,938,686 dozen. |
| 359–C/659–C [1] | 1,866,596 kilograms. |
| 360 | 2,050,046 numbers. |
| 363 | 17,569,344 numbers. |
| 369–D [2] | 1,319,061 kilograms. |
| 369–S [3] | 1,099,214 kilograms. |
| 434 | 7,676 dozen. |
| 435 | 16,448 dozen. |
| 440 | 10,965 dozen. |
| 611 | 8,029,348 square meters. |
| 635 | 533,141 dozen. |
| 638/639/838 | 1,295,127 dozen. |
| 644 | 727,007 numbers. |
| 645/646 | 290,802 dozen. |

| Category | Twelve-month restraint limit |
|---|---|
| 647/648 | 1,559,180 dozen. |
| 840 | 407,399 dozen. |

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–29490 Filed 11–16–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on the Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries and the Outward Processing Program

November 13, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning the extension of amendment to the requirements for participation in the Special Access Program and the Outward Processing Program.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to qualify for Special Access Program treatment, a textile product must be assembled from U.S. fabric in a Caribbean Basin Initiative (CBI) or Andean Trade Preference Act (ATPA) country with which the United States has entered into a bilateral agreement regarding guaranteed access levels under the Special Access Program. The product must be assembled from fabric formed and cut in the United States; meaning that all fabric components of the assembled product (with the exception of findings and trimmings, including elastic strips) must be U.S. formed and cut. Upon entry into the United States, the product must be classified under heading 9802.00.8015 of the Harmonized Tariff Schedule of the United States.

Findings and trimmings of non-U.S. origin may be incorporated into the assembled product provided they do not exceed 25 percent of the cost of the components of the assembled product. Certain non-U.S. formed, U.S. cut interlinings for suit jackets and suit-type jackets may currently qualify as findings and trimmings under a temporary amendment to the Special Access Program.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on December 18, 1998 (see 63 FR 70112), and amended on December 24, 1998 (see 64 FR 149, published on January 4, 1999), extended, through December 31, 2000, the exemption period for women's and girls' and men's and boys' chest type plate, ''hymo'' piece or ''sleeve header'' of woven or weft inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 435, 443, 444, 633, 635, 643 and 644, which are entered under the Special Access Program (9802.00.8015), provided they are cut in the United States.

On January 1, 2000, goods covered under the Outward Processing Program (9802.00.8017) were also authorized to use this exemption, as outlined in the letter and notice to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69746, published on December 14, 1999).

The purpose of this notice is to request public comment on CITA's intention to extend through December 31, 2002, this exemption for women's and girls' and men's and boys' ''hymo'' type interlining. There will be a 30-day comment period beginning on November 17, 2000 and extending through December 18, 2000. Anyone wishing to comment or provide data for information regarding domestic production or availability of the products mentioned above is invited to submit comments or information to Richard B. Steinkamp, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230: ATTN: Becky Geiger.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

**Richard B. Steinkamp,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–29491 Filed 11–16–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of September 30, 2000)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of September 30, 2000, include the installation and state where the cost

comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

COST COMPARISONS

| Installation | State | Function(s) | Total authorization | Public announcement date | Solicitation issued or scheduled date |
|---|---|---|---|---|---|
| ANDERSEN | GUAM | COMMUNICATIONS OPERATIONS AND MAINTENANCE | 24 | 15–Sep–00 | 30–May–01 |
| ANDREWS | MD | COMMUNICATION FUNCTIONS | 181 | 04–Oct–99 | 26–Sep–01 |
| ANDREWS | MD | GROUNDS MAINTENANCE | 9 | 17–Dec–98 | 12–May–00 |
| ANDREWS | MD | AIRCRAFT MAINTENANCE AND SUPPLY | 815 | 25–Jul–97 | 26–May–99 |
| ANDREWS | MD | HEATING SYSTEMS | 22 | 17–Dec–98 | 18–Feb–00 |
| AVON PARK | FL | RANGE OPERATIONS | 38 | 22–Dec–99 | 15–Sep–01 |
| BARKSDALE | LA | PROTECTIVE COATING | 13 | 14–Dec–98 | 29–Jun–00 |
| BEALE | CA | BASE OPERATING SUPPORT | 383 | 08–Sep–99 | 07–Mar–01 |
| BOLLING | DC | SUPPLY AND TRANSPORTATION | 138 | 01–Dec–98 | 12–Sep–00 |
| CARSWELL | TX | BASE OPERATING SUPPORT | 69 | 03–Feb–00 | 05–Jun–01 |
| DAVIS MONTHAN | AZ | BASE SUPPLY | 35 | 04–Jan–00 | 30–Oct–00 |
| EDWARDS | CA | TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT. | 146 | 06–Nov–98 | 09–Jun–00 |
| EDWARDS | CA | BASE OPERATING SUPPORT | 553 | 09–Dec–98 | 08–Nov–00 |
| EGLIN | FL | CIVIL ENGINEERING | 200 | 03–Dec–96 | 21–Jul–98 |
| EGLIN | FL | AIRCRAFT MAINTENANCE AND SUPPLY | 319 | 15–Sep–00 | 01–Aug–01 |
| EGLIN | FL | ADMINISTRATIVE SUPPORT | 49 | 22–Sep–99 | 26–Sep–00 |
| EIELSON | AK | COMMUNICATIONS OPERATIONS AND MAINTENANCE | 63 | 29–Oct–99 | 05–Jan–01 |
| ELMENDORF | AK | BASE SUPPLY | 208 | 26–Mar–99 | 21–Apr–00 |
| ELMENDORF | AK | COMMUNICATIONS OPERATIONS AND MAINTENANCE | 81 | 05–Jan–00 | 07–Nov–00 |
| HANSCOM AFB | MA | CIVIL ENGINEERING | 201 | 09–Dec–98 | 25–Feb–00 |
| HANSCOM AFB | MA | EDUCATION/TRAINING AND PERSONNEL | 17 | 25–Nov–98 | 20–Apr–00 |
| HANSCOM AFB | MA | BASE SUPPLY | 70 | 10–Nov–98 | 01–May–00 |
| HILL AFB | UT | BASE OPERATING SUPPORT | 576 | 30–Sep–98 | 25–Nov–00 |
| HOLLOMAN AFB | NM | TEST TRACK | 125 | 18–Nov–99 | 20–Nov–00 |
| HURLBURT COM FL | FL | HOUSING MANAGEMENT | 12 | 08–Jun–00 | 01–May–01 |
| HURLBURT COM FL | FL | ADMINISTRATIVE SUPPORT | 33 | 28–Apr–99 | 09–Mar–01 |
| HURLBURT COM FL | FL | COMMUNICATION FUNCTIONS | 50 | 31–Jul–98 | 15–Apr–01 |
| HURLBURT COM FL | FL | ENVIRONMENTAL | 7 | 22–Jun–00 | 15–Mar–01 |
| HURLBURT COM FL | FL | BASE SUPPLY | 33 | 15–Jul–98 | 17–Feb–00 |
| KEESLER | MS | MULTIPLE SUPPORT FUNCTIONS | 741 | 21–Sep–99 | 19–Dec–00 |
| KIRTLAND | NM | EDUCATION SERVICES | 12 | 26–Oct–98 | 20–Mar–00 |
| LACKLAND | TX | MULTIPLE SUPPORT FUNCTIONS | 1440 | 26–Jan–99 | 09–Aug–99 |
| LANGLEY | VA | GENERAL LIBRARY | 11 | 22–Dec–98 | 07–Jun–00 |
| MAXWELL | AL | EDUCATION SERVICES | 35 | 24–Jul–00 | 29–Sep–00 |
| MAXWELL | AL | MULTIPLE SUPPORT FUNCTIONS | 814 | 28–Apr–98 | 22–Mar–99 |
| MCCHORD | WA | GROUNDS MAINTENANCE | 10 | 14–Jun–99 | 22–Sep–00 |
| MULTIPLE INSTLNS | | TRANSIENT AIRCRAFT MAINTENANCE | 24 | 07–Jul–99 | 01–Dec–00 |
| RAMSTEIN | GERMY | | | | |

COST COMPARISONS—Continued

| Installation | State | Function(s) | Total authorization | Public announcement date | Solicitation issued or scheduled date |
|---|---|---|---|---|---|
| SPANGDAHLEM | GERMY | | | | |
| MULTIPLE INSTLNS | | TRANSIENT AIRCRAFT MAINTENANCE | 15 | 07–Jul–99 | 29–May–00 |
| LAKENHEATH | UK | | | | |
| MILDENHALL | UK | | | | |
| MULTIPLE INSTLNS | | EDUCATION SERVICES | 73 | 17–Aug–00 | 25–Jan–01 |
| ANDERSEN | GUAM | | | | |
| EIELSON | AK | | | | |
| ELMENDORF | AK | | | | |
| HICKAM | HI | | | | |
| KADENA | JA | | | | |
| KUNSAN | KR | | | | |
| MISAWA | JA | | | | |
| OSAN | KR | | | | |
| YOKOTA | JA | | | | |
| MULTIPLE INSTLNS | | COMMUNICATION FUNCTIONS | 141 | 11–Mar–99 | 14–Apr–00 |
| GENERAL MITCHELL | WI | | | | |
| WESTOVER | MA | | | | |
| MINN–ST PAUL | MN | | | | |
| YOUNGSTOWN | OH | | | | |
| WILLOW GROVE | PA | | | | |
| GRISSOM | IN | | | | |
| PITTSBURG | PA | | | | |
| MARCH | CA | | | | |
| HOMESTEAD | FL | | | | |
| CARSWELL | TX | | | | |
| NEW ORLEANS | LA | | | | |
| MULTIPLE INSTLNS | | COMMUNICATION FUNCTIONS | 208 | 03–Aug–99 | 01–Nov–00 |
| LANGLEY | VA | | | | |
| HILL AFB | UT | | | | |
| MULTIPLE INSTLNS | | MULTIPLE SUPPORT FUNCTIONS | 124 | 14–Jul–99 | 28–Jun–01 |
| CROUGHTON | UK | | | | |
| FAIRFORD | UK | | | | |
| MOLESWORTH | UK | | | | |
| MULTIPLE INSTLNS | | PERSONNEL SERVICES | 223 | 16–Jun–00 | 15–Mar–01 |
| BARKSDALE | LA | | | | |
| CANNON | NM | | | | |
| DAVIS MONTHAN | AR | | | | |
| DYESS | TX | | | | |
| ELLSWORTH | SD | | | | |
| HOLLOMAN | NM | | | | |
| KEFLAVIK | ICELD | | | | |
| LAJES | AZORE | | | | |
| LANGLEY | VA | | | | |
| MINOT | ND | | | | |
| MOODY | GA | | | | |
| MOUNTAIN HOME | ID | | | | |
| NELLIS | NV | | | | |
| SEYMOUR JOHNSON | NC | | | | |
| SHAW | SC | | | | |
| WHITEMAN | MO | | | | |
| NEW BOSTON | NH | BASE OPERATING SUPPORT | 48 | 03–Dec–97 | 01–Oct–00 |
| NEW ORLEANS NAS | LA | BASE OPERATING SUPPORT | 45 | 03–Feb–00 | 02–Jan–01 |
| OFFUTT | NE | BASE OPERATING SUPPORT | 1581 | 30–Sep–98 | 16–Feb–01 |
| PATRICK | FL | SUPPLY AND TRANSPORTATION | 43 | 14–May–98 | 25–Oct–00 |
| PETERSON | CO | PERSONNEL SERVICES | 90 | 05–Jan–00 | 01–Dec–00 |
| RANDOLPH | TX | MULTIPLE SUPPORT FUNCTIONS | 1224 | 14–Sep–00 | TBD |
| ROBINS | GA | BASE SUPPLY | 133 | 01–Apr–99 | 16–Oct–00 |
| ROBINS | GA | EDUCATION SERVICES | 57 | 07–Jan–99 | 17–Aug–00 |
| ROBINS | GA | ENVIRONMENTAL | 49 | 07–Jun–00 | 20–Apr–01 |
| ROBINS | GA | ADMINISTRATIVE TELEPHONE SWITCHBOARD | 17 | 17–Mar–99 | 01–May–00 |

COST COMPARISONS—Continued

| Installation | State | Function(s) | Total authorization | Public announcement date | Solicitation issued or scheduled date |
|---|---|---|---|---|---|
| SCOTT | IL | COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS. | 169 | 19–Mar–98 | 16–Aug–99 |
| SCOTT | IL | PERSONNEL SERVICES | 236 | 25–Jun–99 | 19–Feb–01 |
| SEMBACH | GERMY | COMMUNICATION FUNCTIONS | 48 | 18–Dec–98 | 30–Oct–00 |
| SHEPPARD | TX | MULTIPLE SUPPORT FUNCTIONS | 493 | 21–Sep–99 | 29–Jun–00 |
| TINKER | OK | BASE SUPPLY | 152 | 30–Nov–98 | 17–Nov–99 |
| TINKER | OK | EDUCATION SERVICES | 65 | 16–Nov–98 | 17–Nov–99 |
| TRAVIS | CA | VEHICLE OPERATIONS AND MAINTENANCE | 131 | 15–Jul–98 | 24–Aug–00 |
| USAF ACADEMY | CO | CIVIL ENGINEERING | 497 | 01–Dec–98 | 24–Mar–00 |
| USAF ACADEMY | CO | BASE OPERATING SUPPORT | 108 | 08–May–98 | 09–May–00 |
| USAF ACADEMY | CO | FOOD SERVICES | 297 | 08–May–98 | 21–Apr–99 |
| USAF ACADEMY | CO | COMMUNICATION FUNCTIONS | 114 | 20–May–99 | 20–Jul–00 |
| WHITEMAN | MO | UTILITIES PLANT | 11 | 18–Aug–99 | 01–Jun–00 |
| **DIRECT CONVERSIONS** | | | | | |
| ANDERSEN | GUAM | AIR TRAFFIC CONTROL | 12 | 14–Sep–99 | 30–Jun–00 |
| BOLLING | DC | EDUCATION/TRAINING AND PERSONNEL | 12 | 01–May–00 | 08–Jan–01 |
| COLUMBUS | MS | SURVIVAL EQUIPMENT | 29 | 18–Apr–00 | 15–Apr–01 |
| EDWARDS | CA | LIBRARY | 7 | 09–Dec–98 | 11–Nov–00 |
| EIELSON | AK | SUPPLY IEE | 5 | 17–May–00 | 12–Aug–99 |
| ELLSWORTH | SD | ENVIRONMENTAL | 7 | 05–Nov–98 | 14–Apr–00 |
| F E WARREN | WY | BASE COMMUNICATIONS | 105 | 30–Oct–97 | 19–Jul–00 |
| GRAND FORKS | ND | MUNITIONS MAINTENANCE | 5 | 17–May–99 | 13–Oct–00 |
| HICKAM | HI | AIR MOBILITY OPERATIONS CONTROL CENTER (AMOCC). | 53 | 29–Oct–99 | 13–Jul–00 |
| HICKAM | HI | FURNISHINGS MANAGEMENT | 11 | 27–Jun–00 | 01–Dec–00 |
| HOLLOMAN AFB | NM | MILITARY FAMILY HOUSING MAINTENANCE | 66 | 12–May–97 | 14–Oct–00 |
| KIRTLAND | NM | GENERAL LIBRARY | 6 | 12–Jan–99 | 01–Oct–00 |
| KIRTLAND | NM | RECREATIONAL SUPPORT | 9 | 12–Jan–99 | 01–Oct–00 |
| KIRTLAND | NM | FOOD SERVICES | 15 | 29–Oct–99 | 21–Sep–00 |
| KIRTLAND | NM | ENVIRONMENTAL | 32 | 24–Nov–98 | 01–Oct–00 |
| LANGLEY | VA | AIRCRAFT FLEET SERVICES | 11 | 29–Jun–99 | 25–Sep–00 |
| LANGLEY | VA | COMMUNICATION FUNCTIONS | 8 | 23–Mar–99 | 01–Dec–00 |
| LANGLEY | VA | COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION. | 13 | 31–Jan–00 | 02–Nov–00 |
| LANGLEY | VA | DATA PROCESSING EQUIPMENT OPERATIONS | 15 | 04–Nov–99 | 16–Nov–00 |
| MALMSTROM | MT | BASE COMMUNICATIONS | 85 | 06–Oct–97 | 15–Aug–00 |
| MCGUIRE | NJ | FURNISHINGS MANAGEMENT | 2 | 14–May–99 | 30–Oct–00 |
| MCGUIRE | NJ | HEATING SYSTEMS | 6 | 04–May–99 | 15–Nov–00 |
| MINOT | ND | GROUNDS MAINTENANCE | 9 | 18–May–99 | 23–Oct–00 |
| MT HOME | ID | GROUNDS MAINTENANCE | 6 | 20–Jul–99 | 20–Jul–00 |

COST COMPARISONS—Continued

| Installation | State | Function(s) | Total authorization | Public announcement date | Solicitation issued or scheduled date |
|---|---|---|---|---|---|
| MULTIPLE INSTLNS | | ADMINISTRATIVE SUPPORT | 67 | 08–Aug–00 | 25–Jan–01 |
| ANDERSEN | GUAM | | | | |
| EIELSON | AK | | | | |
| ELMENDORF | AK | | | | |
| HICKAM | HI | | | | |
| KADENA | JA | | | | |
| KUNSAN | KR | | | | |
| MISAWA | JA | | | | |
| OSAN | KR | | | | |
| YOKOTA | JA | | | | |
| OFFUTT | NE | COMPUTER OPERATIONS | 76 | 17–Feb–99 | 21–Jul–00 |
| RANDOLPH | TX | COURSEWARE DEVELOPMENT | 38 | 30–Sep–99 | 30–Jun–00 |
| ROBINS | GA | PROTECTIVE COATING | 8 | 18–Jan–00 | 19–Jan–01 |
| ROBINS | GA | GENERAL LIBRARY | 6 | 23–Nov–99 | 20–Nov–00 |
| ROBINS | GA | AIRFIELD MANAGEMENT | 10 | 06–Jun–00 | 24–May–01 |
| SCHRIEVER | CO | FOOD SERVICES | 18 | 02–Sep–99 | 01–Nov–00 |
| SCOTT | IL | ADMINISTRATIVE SWITCHBOARD | 85 | 05–Aug–99 | 03–Nov–00 |
| SHAW | SC | COMMUNICATION FUNCTIONS | 3 | 18–May–99 | 10–Oct–00 |
| SHAW | SC | ENVIRONMENTAL | 2 | 22–Mar–00 | 10–Aug–00 |
| TINKER | OK | SOFTWARE PROGRAMMING | 67 | 08–May–00 | 01–Dec–00 |
| VANCE | OK | SURVIVAL EQUIPMENT | 22 | 04–Feb–00 | 21–Oct–99 |
| VANDENBERG AFB | CA | MISSILE STORAGE & MAINTENANCE | 66 | 14–Apr–99 | 18–Dec–99 |

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–29477 Filed 11–16–00; 8:45 am]

BILLING CODE 5001–05–U

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice To Extend the Public and Agency Scoping Period and Conduct an Additional Scoping Meeting for the Environmental Impact Statement (EIS) for the Development of an Air-to-Ground Training Range in the State of Montana

The Air National Guard is issuing this notice to advise the public of its decision to extend the public and agency scoping period for the preparation of the Draft EIS which will assess the potential environmental impacts of a proposal to develop an air-to-ground training range in the State of Montana.

An additional scoping meeting will be held on December 12, 2000 at the Phillips County Library, 10½ South 4th East, Malta, MT. The purpose of the additional scoping meeting is to address the development of additional alternatives in Phillips County. The comment period for scoping related comments has been extended to January 15, 2001 to ensure sufficient time to consider public and agency comments in the screening process and preparation of the Draft EIS. You may call 1–800–545–8680 (select option 5, Wing Headquarters) to give oral comments. If you have questions or require additional information, please contact Major Mitnik at (301) 836–8636 or (301) 836–8065. Written comments should be submitted to the following address: Montana EIS, ANG/CEVP, ATTN: Major Tammy Mitnik, 3500 Fetchet Avenue, Andrews Air Force Base, Maryland 20762.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–29518 Filed 11–16–00; 8:45 am]

BILLING CODE 5001–05–U

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent to Grant Exclusive Patent Licenses to Cummins Industries, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of a prospective license to Cummins Industries, Inc. to the Government-owned inventions described in U.S. Patent No. 5,760,089 entitled, ''Chemical Warfare Agent Decontaminant Solution Using Quaternary Ammonium Complexes,'' dated issued: June 2, 1998.

**DATE:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 16, 2001.

**ADDRESS:** Written objections are to be filed with the Office of Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, CD222, 17320 Dahlgren Road, Dahlgren, VA 22448–5100, telephone (540) 653–8061.

**FOR FURTHER INFORMATION CONTACT:** James B. Bechtel, Esq., Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, telephone: (540) 653–8061, fax: (540) 653–7816, or email: *BechtelJB@nswc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: November 7, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–29478 Filed 11–16–00; 8:45 am]

BILLING CODE 3810–FF–U

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ES01–10–000, et al.]**

## Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 9, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Oklahoma Gas and Electric Company

[Docket No. ES01–10–000]

Take notice that on November 6, 2000, Oklahoma Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term promissory notes and other evidences of indebtedness, including guarantees, in an amount not to exceed $400 million, from time to time during a period ending December 31, 2002.

*Comment date:* November 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ES01–11–000]

Take notice that on November 7, 2000, Ogden Martin Systems of Fairfax, Inc. submitted an application pursuant to section 204 of the Federal Power Act requesting authorization to make borrowing in an amount not to exceed $142 million pursuant to a secured long-term revolving loan and letter of credit.

*Comment date:* November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Wheelabrator Shasta Energy Company, Inc.

[Docket No. QF84–431–002]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company Inc. (Shasta Energy) filed a request for recertification that, subsequent to a change in upstream ownership, a qualifying small power production facility with a current net capacity of 49.9 megawatts that is leased and operated by Shasta Energy and is located in Shasta County, California, is a qualifying small power production facility.

*Comment date:* December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Consumers Energy Company

[Docket No. ER01–359–000]

Take notice that on November 3, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with NRG Power Marketing Inc. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 25, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Indianapolis Power & Light Company

[Docket No. ER00–1026–005]

Take notice that on November 2, 2000, Indianapolis Power & Light Company (IPL), tendered for filing its refund report in the referenced docket.

Copies of this filing were served on the Indiana Utility Regulatory Commission and affected transmission customers.

*Comment date:* November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Sierra Pacific Power Company

[Docket No. ER00–2003–002]

Take notice that on November 6, 2000, Sierra Pacific Power Company (Sierra) tendered for filing a refund report in compliance with the directive of the September 18, 2000 order in the above-captioned docket that approved a settlement to establish the Transmission Loss Factor for transmission service Sierra renders under its Open Access Transmission Tariff (OATT).

Copies of this filing were furnished to each affected wholesale customer and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at wholesale. Copies were also served upon the Public Utilities Commission of Nevada and the Public Utilities Commission of California.

*Comment date:* November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. PP&L Colstrip III, LLC

[Docket No. ER01–357–000]

Take notice that on November 3, 2000, PP&L Colstrip III, LLC, tendered a notice of cancellation of its FERC Electric Tariff, Original Volume No. 1. PP&L Colstrip III, LLC requests an effective date of this cancellation of January 2, 2001.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Central Power and Light Company

[Docket No. ER01–356–000]

Take notice that on November 3, 2000, Central Power and Light Company (CPL), tendered for filing a revised Service Agreement between CPL and Magic Valley Electric Cooperative, Inc. (MVEC) under CPL's FERC Electric Tariff, Thirteenth Revised Volume No. 1.

CPL requests an effective date of May 5, 2000, for the revised Service Agreement. Accordingly, to the extent necessary, CPL seeks waiver of the Commission's filing requirements. CPL has posted the filing according to the requirements of 18 CFR 35.2(d).

Copies of the filing are available for public inspection in CPL's offices in Corpus Christi, Texas.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. PJM Interconnection, L.L.C.

[Docket No. ER01–355–000]

Take notice that on November 3, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed Interim Interconnection Service Agreement between PJM and First State Power Management, Inc.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon First State Power Management, Inc. and the state electric utility regulatory commissions within the PJM control area.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Carolina Power & Light Company

[Docket No. ER01–354–000]

Take notice that on November 3, 2000, Carolina Power & Light Company

(CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with The Detroit Edison Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of October 30, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Indianapolis Power & Light Company**

[Docket No. ER00–3518–001]

Take notice that on November 3, 2000, Indianapolis Power & Light Company (IPL), tendered for filing its compliance filing in the above-referenced docket.

Copies of this filing have been served upon Citizens Gas & Coke Utility and the Indiana Utility Regulatory Commission.

*Comment date:* November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. MidAmerican Energy Company**

[Docket No. ER00–3273–001]

Take notice that on November 2, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a First Revised Service Agreement No. 15 dated July 10, 2000, entered into with Resale Power Group of Iowa, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff Original Volume No. 5.

MidAmerican requested a July 27, 2000, effective date for the Service Agreement, as amended, subject to MidAmerican making a compliance filing to conform MidAmerican's previous filing in this matter dated July 26, 2000 to be consistent with the necessary filing rate schedule designations as required by Order No. 614, FERC Stats & Regs. ¶ 31,096 (2000) and Southwest Power Pool Inc., 92 FERC ¶ 61,109 (2000).

MidAmerican has served a copy of the compliance filing on the Resale Power Group of Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Central Illinois Light Company**

[Docket No. ER00–3386–002]

Take notice that on November 2, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing Scheduled A to an Interconnection Agreement with Bio-Energy Partners for Generation Interconnection and Parallel Operation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Enron Energia Industrial de Mexico, S. de R.L. de C.V.**

[Docket No. EG01–25–000]

Take notice that on November 6, 2000, Enron Energia Industrial de Mexico, S. de R.L. de C.V. (Enron Mexico), a company with its principal place of business at Av. Lazaro Cardenas 2321, Ste. 601, Residencial San Agustin, San Pedro Garza Garcia, Nuevo Leon 66260 Mexico, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Enron Mexico is engaged in the development of a 245 MW natural gas powered cogeneration facility to be located near Monterrey, Mexico. From the facility, Enron Mexico will sell both electricity and steam under power purchase and steam purchase agreements to retail customers in Mexico.

*Comment date:* November 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–29450 Filed 11–16–00; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6903–8]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

**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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): *Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123,* EPA ICR #1424.04, OMB Control #2050–0077 which will expire on March 1, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 4, 2000.

**ADDRESSES:** Mail comments on specific aspects of this renewal of the information collection to Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460. You may review the draft renewal information collection form and the instrument from 8:30 am to 5:30 pm, Monday through Friday by visiting Public Docket No. LGR, located at 1235 Jefferson Davis Highway, (ground floor) Arlington, VA. A reasonable fee my be charged for copying docket material.

Electronic or fax versions of this material may be obtained by calling Lisa Boynton on (703) 603–9052 and leaving an email address or fax number, or by emailing Boynton.Lisa@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** Lisa Boynton, (703) 603–9052, Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are Local Governments that apply for reimbursement under this program.

*Title: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123,* EPA ICR #1424.04, OMB Control #2050–0077 which will expire on March 1, 2001.

*Abstract:* The Agency requires applicants for reimbursement under this program authorized under section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit. 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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement:

| Burden item | Average hours per application |
|---|---|
| Read Instructions [a] | 1 |
| Gather Information [b] | 3 |
| Compile Information [c] | 3 |
| Complete Application [d] | 1 |
| File and Maintain Information [e] | 1 |
| Total Estimated Burden Hours Per Application | 9 |
| Total Estimated Number of Applications Submitted by All Applicants per Year | × 200 |
| Total Estimated Annual Burden Hours | 1800 |
| Total Estimated Cost Burden to Responders [f] | $ 23,300 |

[a] Time to read or hear instructions. This includes the time which will be needed by applicants to familiarize themselves with the requirements for requesting reimbursement and the instructions for completing the application form.

[b] Time to gather information. This includes the time necessary to collect various reports from files and extract pertinent information and find additional reference materials and information.

[c] Time to compile information. This includes the time necessary to assemble information specific to the response for which reimbursement is being sought. This may include interviewing first responders and ascertaining the number of work-hours involved in the response.

[d] Time to complete application. This includes the time required to enter the pertinent information on the application form in accordance with the line-by-line instructions.

[e] Time to file and maintain information. This includes the time needed for preparing file folders, indexes, and filing.

[f] Estimated hourly rate is $18.50. This estimate takes into consideration that the application may be prepared by a secretary, Fire Chief, County Clerk, Health Professional, or other administrative staff.

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.

Dated: October 2, 2000.

**Larry Reed,**

*Acting Director, Office of Emergency and Remedial Response.*

[FR Doc. 00–29506 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6612–8]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

### Draft EISs

ERP No. D–AFS–L39057–OR Rating EC2, Rimrock Ecosystem Restoration Project, To Promote Healthy and Sustainable Watershed Conditions, Implementation, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR.

*Summary:* EPA expressed concerns regarding air quality due to prescribed burning, funding of K–V projects, and roads. EPA requested that the EIS commit to completing restoration projects; describe the smoke management program and provide information on road density.

ERP No. D–AFS–L65365–ID Rating EC2, Swan Flat Timber Sale, Proposal to Cut and Haul Sawtimber, Caribou National Forest, Land Resource Management Plan (LRMP), Montpelier Ranger District, Bear Lake County, ID.

*Summary:* EPA expressed concerns regarding road obliteration, air quality, harvesting in a roadless area, and beetle infestation. EPA requested clarification and additional information on these issues.

ERP No. D–BLM–K67053–CA Rating EC2, Mesquite Mine Expansion Project, To Expand the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits and Reclamation Plan Approval, Imperial County, CA.

*Summary:* EPA expressed concerns based on the project's predicted long-term pit water quality, potential

ecological risk, and impacts to waters of the U.S. EPA recommended additional information in the FEIS regarding pit water quality predictions, mitigation, reclamation and bonding, and inclusion of the waste rock sampling and disposal plan and a demonstration of compliance with the Clean Water Act section 404(b)(1) guidelines.

ERP No. D–FRC–E08020–00 Rating EO2, Gulfstream Natural Gas System Project, Construction and Operation, To Provide Natural Gas Transportation Service, AL, MS and FL.

*Summary:* EPA is concerned that the Gulfstream proposal would impact forested wetlands and marine hard ''live'' bottoms along the proposed pipeline route. Hard bottoms are essentially ''unmitigatable''. EPA also suggested that only one of the two competing alignments across the Gulf of Mexico (separate EISs) should be potentially certificated by FERC (Gulfstream vs. Buccaneer) or only one larger joint effort with modification and further mitigation.

ERP No. DR–BLM–K65213–NV Rating LO, Black Rock Desert area. Minor issues were raised concerning construction of fee collection stations and monitoring for OHV impacts.

*Summary:* EPA expressed a lack of objections to BLM's preferred management plan for the Black Rock Desert area. Minor issues were raised concerning construction of fee collection stations and monitoring for OHV impacts.

ERP No. DR–FAA–K51037–CA Rating EC2, Metropolitan Oakland International Airport (MOIA), Airport Development Plan (ADP), Reevaluation of the Forecasts and Planning Assumptions in the ADP, Airport Layout Plan Approval, Funding and COE section 404 and 10 Permits Issuance, Port of Oakland, Alameda County, CA.

*Summary:* EPA expressed concerns on cumulative noise, air quality and wetland impacts; impacts to areas regulated under section 10 of the Rivers and Harbors Act; and environmental justice impacts. EPA also expressed concern with the narrow range of alternatives and requested that one alternative eliminated from consideration be analyzed in detail.

**Final EISs**

ERP No. F–AFS–E65052–KY Daniel Boone National Forest, Implementation, Salvage Harvest Due to 1998 Storm Damage Timber, McCreary and Pulaski County, KY.

*Summary:* EPA remains concerned about degradation of the Rock Creek and Marsh Creek waterways from erosion and siltation associated with road building and forestry activities in these areas. Adherence to Best Management Practices and preventing use of off-highway vehicles in these areas should be vigorously implemented and strictly monitored to ensure that water quality and in-stream habitat are fully protected.

ERP No. F–BIA–K65223–CA Cortina Integrated Solid Waste Management Project, Development and Operation, Approval of Land Lease Cortina Indian Rancheria of Wintin Indians, Colusa County, CA.

*Summary:* The Final EIS addressed the concerns raised by EPA on the Draft EIS. EPA requested that commitments and mitigation measures in the FEIS be reflected in BIA's Record of Decision. Because the project is on tribal land, EPA noted its continuing regulatory and/or permit role under several federal laws, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

ERP No. F–NPS–J61102–00 Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway Winter Use Plan, Implementation, Fremont County, ID, Gallatin and Park Counties, MT and Park and Teton Counties, WY.

*Summary:* EPA's review has concluded that the preferred alternative for this project would adequately remedy the on-going significant impacts to environmental resources and human health in these Parks. The document provides a reasonable range of alternatives and discloses, in detail, the environmental effects of each alternative.

ERP No. F–SFW–K99029–NV Clark County Multiple Species Habitat Conservation Plan, Issuance of a Permit to Allow Incidental Take-of-79 Species, Clark County, NV.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–K32046–CA Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA.

*Summary:* EPA's review found the Final Supplemental EIS to be generally responsive to concerns EPA raised on the Draft Supplemental EIS. EPA provided comments on toxic air contaminants (hazardous air pollutants) associated with the project and the suitability of dredged materials for aquatic or ocean disposal. EPA asked the Corps to explore the feasibility of reasonable mitigation measures for reducing emissions of air toxics.

Dated: November 14, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–29528 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6612–7]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements filed November 6, 2000 through November 9, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000381, Final EIS, BOP, CA, Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA, Due: December 18, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000382, Final EIS, SFW, CA, Trinity River Mainstem Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA, Due: December 18, 2000, Contact: George Guillen (707) 822–7201.

EIS No. 000383, Draft EIS, BLM, NM, Sierra and Otero Counties Resource Management Plan Amendment and Federal Fluid Minerals Leasing and Development, Implementation, Sierra and Otero Counties, NM, Due: February 20, 2001, Contact: Tom Philips (505) 525–4377.

EIS No. 000384, Draft Supplement, FHW, CO, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62, Clear Creek County Road 381 and Forest Development Road 118), Additional Alternative includes Rehabilitation, Light Reconstruction and Full Construction, Funding, Clear Creek and Park Counties, CO, Due: January 16, 2001, Contact: Richard Cushing (303) 716–2138.

EIS No. 000385, Final EIS, COE, NB, Sand Creek Watershed Restoration Project, To Develop Environmental Restoration, City of Wahoo, Saunders County, NB, Due: December 18, 2000, Contact: Kevin Mayberry (402) 221–4020.

EIS No. 000386, Final EIS, COE, CA, Murrieta Creek Flood Control and

Protection, Implementation, Riverside County, CA , Due: December 18, 2000, Contact: Timothy Smith (213) 452–3854.

EIS No. 000387, Final EIS, AFS, MT, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT, Due: December 18, 2000, Contact: Rick Prausa (406) 791–7720.

EIS No. 000388, Draft EIS, FHW, PA, NY, US Route 15 Improvement Project, from PA–6015, section G–20 and G–22 Tioga County, Pennsylvania and PIN 6008.22.123 Steuben County, New York (US Route 15 between PA Route 287 and Presho, New York, Funding and COE section 404 Permit, Tioga County, PA and Steuben County, NY, Due: January 31, 2001, Contact: James A. Cheatham (717) 221–3461.

EIS No. 000389, Final EIS, BLM, CA, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Updated Information concerning ''Endangered, Rare or Threatened'' Biological Resources, Plan of Operations and Reclamation Plan Approvals, Right-of-Way Grants, Conditional Use/U.S. COE Permits, El Centro Resource Area, Desert District, Due: December 18, 2000, Contact: Glen R. Miller (760) 337–4400.

EIS No. 000390, Final EIS, AFS, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas, Due: December 18, 2000, Contact: Scott Conroy (703) 605–5299.

**Amended Notices**

EIS No. 000376, Final EIS, AFS, ID, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID, Due: December 8, 2000, Contact: Kimberly Brandel (208) 347–0300.

Revision of FR Notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

EIS No. 000377, Final EIS, COE, MO, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO, Due: December 8, 2000, Contact: Deborah Foley (314) 331–8485.

Revision of FR notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

EIS No. 000379, Final EIS, COE, WA, Programmatic EIS—Green/Duwamish River Basin Restoration Program, Capitol Improvement Type Program and Ecological Health, King County, WA, Due: December 8, 2000, Contact: Patrick Cagney (206) 764–6577.

Revision of FR notice published on 11/09/2000: CEQ Due Date Corrected from 12/11/2000 to 12/08/2000.

Dated: November 14, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–29529 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6903–5]**

## Request for Applications, Ecology and Oceanography of Harmful Algal Blooms Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notification of financial assistance for project assistance.

**SUMMARY:** The purpose of this notice is to advise the public that the participating agencies are soliciting research proposals of up to 3 years duration, and depending on appropriations up to 5 years for multidisciplinary regional studies, for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on algal species whose populations may cause or result in deleterious effects on ecosystems and human health. Studies of the causes of such blooms, their detection, effects, mitigation, and control in U.S. coastal waters, are solicited. This document details the requirements for applications for research support that will be considered by the Federal research partnership.

**DATES:** The deadline for proposals is January 31, 2001, by 3:00 PM, EST.

**ADDRESSES:** Submit the original and twenty copies of your proposal to Coastal Ocean Program Office, N/SCI2, SSMC#3, 9th Floor, Room 9752, 1315 East-West Highway, Silver Spring, MD 20910. The required forms for applications with instructions are accessible on the Internet at http://es.epa.gov/ncerqa/rfa/forms/downlf.html. Forms may be printed from this site.

The complete announcement program can be accessed on the Internet at *http://www.epa.gov/ncerqa*, under ''announcements.''

**AWARDS:** Final selection of awardees by the participating agencies will be determined on the basis of peer and panel recommendations, applicability of the proposed effort to the interests and objectives of an agency, and the availability of funds. It is anticipated that each award will be made through and be administered by a single agency; however, several agencies may participate in providing assistance to individual components of multi-institutional projects. Applicants recommended for funding may be requested to resubmit their proposals and modify their budgets and/or work plans to comply with special requirements of the particular agency supporting their awards. Awards will be subject to the terms and conditions of the sponsoring agency.

**FOR FURTHER INFORMATION CONTACT:** Technical Information: Dr. Kevin Sellner, ECOHAB Coordinator, COP Office, 301–713–3338/ext 127, EMail: ksellner@cop.noaa.gov. Administrative Information: Dr. Robert E. Menzer, EPA/NCER, (202) 564–6849, EMail: menzer.robert@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Program Goals and Topic Areas

The National Center for Environmental Research/Environmental Protection Agency (EPA); the Coastal Ocean Program, and the Office of Protected Resources, National Oceanic and Atmospheric Administration (NOAA)/Department of Commerce; the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation (NSF); the Office of Naval Research (ONR)/Department of Defense; and the Office of Earth Science/National Aeronautics and Space Administration (NASA) are cooperating in an opportunity for investigators to propose activities to address three primary areas in the national problem of HABs. For the first area, proposals are sought for individual studies or small interdisciplinary efforts that address gaps in general knowledge related to the nature of HAB phenomena. These studies should address fundamental ecological and oceanographic questions related to HABs. The second area of interest is the prevention, control, and mitigation of HABs and their impacts. The purpose of this area is to encourage research into key questions on the underlying mechanisms involved with HABs and their control and accompanying ecosystem impact, without necessarily being limited to particular study regions. The third

research area is to characterize the impact of acute and chronic exposure to HAB species or toxins on marine mammals, birds, and other protected species.

## Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments, are eligible under all existing authorizations. Some participating agencies are authorized to make awards to profit-making firms and international institutions. NOAA and other permitted Federal partnering agencies may fund investigators from Federal laboratories that successfully compete through the ECOHAB Program announcement, but salaries of full time Federal employees will be in accord with individual agency policies. Federal investigators will be required to submit certifications or documentation which clearly show that they have specific legal authority to receive funds from another Federal agency in excess of their appropriations. Applications from non-Federal and Federal applicants will be competed against each other. Proposals from Federal researchers deemed acceptable and selected for funding will be funded through a medium other than a grant or cooperative agreement, where legal authority exists for such funding. In order for projects to be eligible for support by NOAA Sea Grant, the projects must include non-Federal matching funds equivalent to 50% of the total Federal funds requested.

## How To Apply

The original and twenty (20) copies of the fully developed application (21 in all) and one (1) additional copy of the abstract, prepared in accordance with the instructions in the full announcement, must be received by NOAA no later than 3:00 P.M. Eastern Time on the closing date, January 31, 2001.

**Program Authorities.** For COP: 33 U.S.C. 883d and P.L. 105–383; for the Office of Protected Resources/NOAA: 16 U.S.C. 1382 and 16 U.S.C. 1421a; EPA: 33 U.S.C 1251 *et. seq.* and 40 CFR parts 30 and 40; for NSF: 42 U.S.C. 1861 *et. seq.*; for ONR: 10 U.S.C 2358 as amended and 31 U.S.C 6304; and for NASA: 14 CFR part 1260.

*Catalog of Federal Domestic Assistance Numbers.* 11.478 for the Coastal Ocean Program; 11.472 for NOAA/Office of Protected Resources; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

Dated: October 31, 2000.

Approved for publication.

**Norine E. Noonan,**

*Assistant Administrator for Research and Development, USEPA.*

[FR Doc. 00–29503 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–200003; FRL–6751–8]**

## Technical Resource Center for Integrated Pest Management in Schools and Day Care Centers; Solicitation of Grant Proposals

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

**ACTION:** Notice.

**SUMMARY:** EPA is soliciting pre-application grant proposals and is prepared to provide up to $100,000 for the establishment of a Technical Resource Center for promoting the adoption of integrated pest management (IPM) in schools and day care centers. This Center will be regionally based (region of the country and target states to be identified by the applicant). The Center will provide information, guidance, education, training and other tools necessary for schools and day care centers to successfully launch and sustain IPM programs geared at reducing children's exposure to pests and pesticides. EPA will award a cooperative agreement with up to $100,000 in initial funding, with the possibility of additional future funding depending on the availability of funds budgeted for this purpose. Selection of the successful grantee will be made based on the evaluation of the pre-application proposal and the results of oral interviews with prospective grantees. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

**DATES:** All pre-applications must be received on or before December 15, 2000.

**ADDRESSES:** Submit pre-application proposals to: Katherine J. Seikel, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Katherine J. Seikel, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (703) 308–8272; e-mail address: seikel.kathy@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Does this Notice Apply to Me?

This action is directed to all entities eligible to receive funding pursuant to the assistance award authority of FIFRA section 20. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. Scope and Purpose

The cooperative agreement to be funded pursuant to this announcement will provide funding for activities designed to foster the adoption and maintenance of IPM programs in schools and day care centers in a particular region of the country, and in states to be selected by the grantee. Thus, we anticipate this center being regional—not national—in scope. Applicants are expected to provide information on how and why they have targeted a particular region of the country for IPM in schools, and on the number of schools and day care centers in the region they intend to serve (so EPA can gauge the scope and feasibility of the project plan).

Applicants should provide information on the status of IPM implementation in this region as it exists today. Applicants should also outline specific goals and include a strategic plan for changing the status quo as a result of activities funded under this assistance agreement. Applicants are encouraged to provide clear-cut, measurable goals for their work under this cooperative agreement. An example would be the number of schools and day care centers in the target region, the number of those schools and day care centers currently practicing IPM, and the number of schools/day care centers which the grantee will have engaged in the establishment of IPM programs by the end of the first year of this cooperative agreement.

The expected duration of this project is 1–2 years. The applicant has the flexibility to propose the start and end dates.

## III. Eligibility

Eligible recipients are all entities eligible to receive grants under the authority of FIFRA section 20, as amended by Public Law 106–074. Eligible entities include, but are not limited to States, tribes, institutions of higher learning, non-profit

organizations, for-profit businesses, and individuals.

*A. General Requirements*

1. There are no requirements for matching funding under this grant program. However, applicants are encouraged to seek funding from sources other than EPA to supplement the income of this Center. Applicants must identify, as part of this proposal, any funds from other sources (private or public) that will be used to carry out proposed grant projects.

2. If the applicant has conducted, or is currently working on a related project(s), please provide a brief description of those projects and funding sources in the application.

*B. Administrative Reporting Requirements*

The applicant must provide EPA with the original plus three copies of the Semi-annual progress reports. These reports must include:

1. Total financial expenditures for the quarter, with costs broken down by cost element, i.e. direct labor, travel costs, supplies, equipment sub contract costs, sub grantee costs, indirect costs.

2. For direct labor, provide the names and percentage time devoted to the project for each person assigned to the assistance agreement.

3. For travel costs, provide names of travelers, destinations, and purpose of trip(s).

4. For indirect costs (overhead, fringe benefits, general and administrative expenses, etc.), provide the base of allocation, the name of the cognizant audit Agency and the period for which final rates were negotiated.

5. Total estimated expenditures for the next quarter, with costs broken down by cost element and anticipated activities for the upcoming quarter.

6. Explanation of expenditures that are significantly higher or lower than projected in the original budget estimate. If expenditures are higher than originally estimated, explain how project activities will be accomplished within the originally budgeted amount or, alternatively, provide a projection of any anticipated shortfall or activities that must be reduced or curtailed to stay within the budget.

7. Justification for any anticipated changes to personnel assigned to the project or changes to the level of effort to be devoted by approved personnel. Provide curricula vitae for any proposed additions or replacements to the project team.

8. A summary statement of funds available for the budget period, expenditures by quarter for all quarters included in the budget period, and funds remaining in the budget period.

9. Explanation of any difficulties encountered during the reporting period or foreseen for future reporting periods that might hinder the recipient's accomplishment of planned project activities.

10. Technical progress, including an accounting of all work shops attended and held, training provided, consultations, tally of phone calls to 800 number, amount and nature of all written materials distributed to outside parties, number of facilities that have launched new IPM programs, and any other measures that can serve as measures of grantee progress toward institutionalization of IPM programs in schools falling within its target zone. The technical progress report should also provide information on obstacles encountered, unforseen difficulties or any other indicators that program objectives may not be accomplished on time and reasonably in conformance with anticipated project costs.

In addition to periodic progress reports, the grantee shall furnish the EPA Project Officer ALL materials developed or maintained by the Center. The Government reserves the right to cite, distribute, and otherwise use these materials for public purposes which extend beyond the scope of this assistance agreement.

## IV. Authority

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), section 20, Research, as amended by Pubic Law 106–074 authorizes EPA to award grants for the purpose of conducting research, development, and monitoring as necessary, ''Provided that, notwithstanding any other provisions of law, beginning in FY 2000 [October 1, 1999] and thereafter, grants awarded under section 20 of FIFRA, as amended, shall be available for research, development, monitoring, public education, training, demonstrations, and studies.''

## V. Activities to be Funded

EPA will provide financial assistance in the form of a cooperative agreement to fund a Technical Resource Center for IPM in schools to fund activities proposed by the grantee, in consultation with EPA. These activities may include:

1. Establishing programs to increase public awareness of IPM and undertaking all such actions as may be necessary to aggressively promote the adoption of IPM programs by schools and day care centers in the target region.

2. Creating awareness of IPM to prospective school administrators or other decision-makers through effective use of outreach and other communications strategies. (This might include publication of newsletters, development of a web page, providing a toll-free telephone line, etc.).

3. Coordinating development and distribution of guidance and other resources necessary for successful implementation of IPM in schools and day care centers falling within the region targeted by the grantee. This could include user friendly best practices, ''how-to'' guides, pest specific management tips, etc. Much of this guidance already exists; therefore, it is expected that the center would devote substantially more effort toward assessing the value of existing tools for schools (guidance, handbook, video and audio tapes, etc.) and determining which is best suited for widespread distribution than on developing new materials.

4. Building and maintaining a library of all applicable state-developed school IPM materials.

5. Establishing a core group of nationally recognized school IPM trainers and consultants. Providing training and work shops for groups such as school administrators, facilities services staff, food services staff, and teachers.

6. Maintaining a database and communications network. This could involve some new development but should, to the extent possible, draw upon existing resources to avoid re-inventing the wheel and to maximize the application of grant funds toward the diffusion of IPM in targeted schools districts. In all likelihood, this will require establishing a toll free 800 number to handle call-ins.

7. Finding and filling information gaps to facilitate adoption of IPM in schools.

8. Developing training efforts such as a national short course on IPM at the Center's location, symposia and on-site visits for coordinators of new and existing programs, etc.

9. Measuring the effectiveness of local IPM efforts through use of model guidelines for IPM training and implementation or other methods developed by the cooperator.

10. Creating guidance for schools to self-evaluate (or for outside parties to evaluate) schools' implementation of IPM.

11. Providing assistance to the State Pest Control Associations and the National Pest Management Association in training Pest Control Operators on school IPM implementation.

## VI. Pre-Application Requirements, Procedures, and Schedule

Applicants must submit a proposal for the pre-application procedure. The pre-application, as described in this unit, consists of two parts—a work plan and a budget.

The Agency will use the applicant's work plan and budget to select projects to be funded under this grant program. After EPA conducts a review of all pre-applications, it may, at its discretion, conduct interviews, either telephonically or in person, with applicants. The results of the interview, along with written material accompanying the proposal submission, will be used to determine the successful applicant. The successful applicant will be contacted and requested to submit other documents (such as the ''Application for Federal Assistance'' form, a ''Budget Information: Non-Construction Programs'' form, and other required forms) to complete the application process.

All applicants must submit one original and three copies of the pre-application (double-sided copies). Pre-applications must be reproducible (for example, stapled in the upper left-hand corner, on white paper, and with page numbers). The deadline for EPA's receipt of pre-applications is December 15, 2000.

The pre-application consists of the following two parts.

1. *Work plan*. The work plan must describe the proposed project. The work plan must be no more than 15-typed pages in length (excluding resumes). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi) and must have margins that are at least 1 inch.

Resumes of key personnel shall be included in an appendix to the proposal and should include references (names, phone numbers or other contact information) for previous or current grants or contracts within the last 5 years. The appendix must be no more than 10 pages total and follows the same paging and spacing description as provided above.)

2. *Budget*. The budget should include the following categories of costs:

A. Personnel
B. Fringe benefits
C. Travel
D. Equipment
E. Supplies
F. Contractual
G. Other
H. Total direct charges (sum of personnel, fringe benefits, travel, equipment, supplies, contractual, and other)
I. Indirect charges and total (sum of total direct charges and indirect charges)

## VII. Evaluation Criteria

EPA will review all applications. Applications will be reviewed for quality, strength, and completeness against the following criteria:

1. *Management plan and technical approach*. This will include, among other things, the plan for making use of available resources to stock the center, plan for becoming financially self-sufficient, strategy for determining the order of priority for introducing IPM into various states and school districts, etc. Applicant must include reasonable and attainable goals and an approach that is clearly detailed. The plan should include expected outcomes and procedures that will be used to evaluate progress toward achievement of these outcomes. Applicant should provide information on projects of similar scope and magnitude that he/she has managed.

2. *Technical expertise*. This includes qualifications, education, training and field experience of all staff assigned to the project. The applicant should describe positions of staff, roles and responsibilities, and their qualifications. Applicant should include documentation of qualified expert staff who may be used as a reference but may not be directly compensated.

3. *Budget and schedule*. This budget and schedule will be evaluated to ensure they are reasonable, clear, and consistent with the intended use of the funds. Applicants should assume that this project will be funded for 18 months to 2 years only. The availability of funds for additional time periods is not known at this point in time. EPA's role is to provide start-up funding for the center. It is anticipated that the center will ultimately become self-sustaining.

## VIII. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a ''rule,'' grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects

Environmental protection, children's health, pesticides.

Dated: November 8, 2000.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00–29512 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6903–6]**

## Investigator-Initiated Grants: Request for Applications

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of request for applications.

**SUMMARY:** This notice provides information on the availability of fiscal year 2001 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

**DATES:** Receipt dates vary depending on the specific research areas within the solicitations and are listed below.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, National Center for Environmental Research (8703R), 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone (800) 490–9194. The complete announcements can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under ''announcements.''

**SUPPLEMENTARY INFORMATION:** In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Environmental Monitoring for Public Access and Community Tracking (EMPACT); (2) Children's Vulnerability to Toxic Substances in the Environment; (3) Research Program on Statistical Survey Design and Analysis for Aquatic

Resources (joint with NASA); (4) Aggregate Exposure Assessment for Pesticides: Longitudinal Case Studies; (5) Ecological Indicators for Gulf of Mexico Estuaries; and (6) Environmental Statistics Center. Applications must be received as follows: February 21, 2001, for topic (1); February 28, 2001, for topic (2); March 1, 2001, for topic (3); March 7, 2001, for topic (4); March 8, 2001, for topic (5); and March 21, 2001, for topic (6).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the EMPACT RFA are Barbara Karn (*karn.barbara@epa.gov*), telephone 202–564–6820, and Charlotte Cottrill (*cottrill.charlotte@epa.gov*), telephone 202–564–6771. Contact person for the Children's Vulnerability RFA, the Aggregate Exposure Assessment for Pesticides RFA, and the Environmental Statistics Center RFA is Chris Saint (*saint.chris@epa.gov*), telephone 202–564–6909. Contact persons for the Ecological Indicators for Gulf of Mexico Estuaries RFA are Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911, and Eric Lindstrom (elindstr@hq.nasa.gov), telephone 202–358–4540. Contact person for the Statistical Survey Design and Analysis RFA is Barbara Levinson (*levinson.barbara@epa.gov*), telephone 202–564–6911.

Dated: November 1, 2000.
Approved for publication

**Norine E. Noonan,**

*Assistant Administrator for Research and Development.*

[FR Doc. 00–29505 Filed 11–16–00; 8:45 am]

**BILLING CODE 6560–50–U**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6903–1]**

## Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee of the US EPA Science Advisory Board (SAB), will meet December 5–7, 2000 in conference room 6530, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 8:30 a.m. on December 5 and adjourn no later than 4:00 p.m. on December 7. All times noted are Eastern Standard Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

*Purpose of the meeting:* At this meeting, the Committee will consider for approval the report of the Natural Attenuation Research Subcommittee. The Subcommittee reviewed the present and proposed natural attenuation research program of EPA's Office of Research and Development (ORD) so that ORD can refine its plans and programs on this topic. This activity began with a conference call meeting on January 26th conference call meeting, included a face-to-face meeting August 14–15, 2000; the most recent meeting was October 25, 2000. Background, including the availability of review materials, will be found in previous notices. (The most important of these is 65 FR 1866–1867, January 12, 2000).

The Committee will also consider potential FY2001 activities. The Agency has requested a review of the Surface Impoundments Study for the Office of Solid Waste and a consultation on sustainability research for the Office of Research and Development. The Committee will consider whether to use the draft report of the Science Advisory Board's Risk Reduction Options Subcommittee as an input to a potential initiative on risk reduction.

The Committee has also requested briefings on various Agency topics. The exact briefings depend upon the availability of the speakers, but may include: contaminated sediments, the environmental impacts of natural hazards, industrial ecology, and the information needs of risk managers.

*Availability of materials:* A copy of the Natural Attenuation draft and a draft meeting agenda will be available on the SAB website (*www.epa.gov/sab*) approximately two weeks prior to the meeting.

*For further information:* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at conway.kathleen@epa.gov. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Kathleen White Conway no later than noon Eastern Standard Time on November 28.

### Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

*General information:* Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting access:* Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Conway at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 9, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–29507 Filed 11–16–00; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34203E; FRL–6753–3]**

## Chlorpyrifos; Receipt of Requests For End-Use Product Amendments and Cancellations

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

**ACTION:** Notice.

**SUMMARY:** Companies that hold the pesticide registrations of enduse pesticide products containing chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridinyl)phosphorothioate] have asked EPA to cancel or amend their registrations. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. These requests for voluntary cancellation and amendment are the result of a memorandum of agreement signed by EPA and the basic manufacturers of the active ingredient chlorpyrifos on June 7, 2000. Registrants identified in this notice requesting voluntary cancellation and amendments are in large part the customer of these basic manufacturers. Given the potential risks, both dietary and nondietary, that chlorpyrifos use poses, especially to children, EPA intends to grant the requested cancellations and amendments to delete uses. EPA also plans to issue a cancellation order for the deleted uses and the canceled registrations at the close of the comment period for this announcement. Upon the issuance of the cancellation order, any distribution, sale, or use of chlorpyrifos products will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

**DATE:** Comments must be received on or before December 18, 2000. Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided in **ADDRESSES** and identified by docket control number OPP–34203E.

**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–34203E in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

**SUPPLEMENTARY INFORMATION:** This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. And the third part proposes existing stock provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34203E. 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–34203E in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis 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 email 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–34203E. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Receipt of Requests To Cancel and Amend Registrations To Delete Uses

*A. Background*

In a memorandum of agreement (Agreement) effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel or amend their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. With respect to the registration amendments, the registrants have asked EPA to amend end-use product registrations to delete the following uses: All termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, and containerized baits in CRP); all outdoor non-residential sites (except golf courses, road medians, industrial plant sites, nonstructural wood treatments, and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on post-bloom apple trees. In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb/a.i. per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

EPA previously published on September 20, 2000 a **Federal Register** Notice (65 FR 56886) (FRL–6743–7) announcing receipt of amendments and cancellations for manufacturinguse products and associated enduse products for signatories of the Memorandum of Agreement that was signed on June 7, 2000 and subsequent ancillary agreements. A copy of the Memorandum of Agreement that was signed on June 7, 2000 is located in docket control number OPP–34203D.

*B. Requests for Voluntary Cancellation of End-Use Products*

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

| Company | Reg. No. | Product |
|---|---|---|
| Verdant Brands, Inc | 70–178 | Dursban 1/2G Granular Insecticide |
| | 70–180 | Dursban Lawn & Ornamental Spray |
| | 70–184 | Kill-Ko Dursban 1G Granular Insecticide |
| | 70–228 | Home Pest Insect Killer |
| | 70–232 | Rigo Dursban 2EC Liquid Insecticide |
| | 70–255 | Rigo Home Pest Control |
| | 70–286 | Rigo Dursban 1E Insecticide |
| | 70–290 | Rigo's Best Termite Killer |
| Dexol, A Division of Verdant Brands, Inc | 192–141 | Dexol Dexa-Klor Granules Soil Insect Control |
| | 192–142 | Dexol Dexa-Klor Insect Spray |
| | 192–151 | Dexol Dexa-Klor Pest Control Indoor Insect Killer |

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 192–171 | Dexol Roach, Cricket and Spider Dust |
| | 192–173 | Dexol Termite and Lawn Insect Killer |
| | 192–180 | Dexol Dursban Granules Insect Control |
| | 192–192 | Dexol Predator Home Insect Killer II |
| Whitmire Micro-Gen Research Laboratories, Inc. | 499–147 | Whitmire PT 270 Dursban |
| | 499–256 | Whitmire Chlorpyrifos Pressurized Residual Spray |
| | 499–270 | Whitmire 1–12 Insecticide |
| | 499–292 | Whitmire PT 279 Engage Residual Injection System |
| | 499–315 | Whitmire Duration PT 275 |
| | 499–317 | Whitmire 1–6 Insecticide |
| | 499–364 | Whitmire PT 1900 Total Release Insecticide |
| | 499–379 | Whitmire PT 479 Regulator |
| | 499–423 | Whitmire TC-135 Chlorpyrifos MC |
| | 499–424 | Whitmire TC-160 Microencapsulated Termiticide |
| | 499–448 | Whitmire TC 151 Bait |
| Walco-Linck Company | 506–158 | TAT Flea & Tick Killer with Residual Action |
| | 506–164 | TAT Roach & Ant Killer II |
| The Scotts Company | 538–69 | Scotts Western Lawn Insect Control |
| | 538–94 | Scotts Western Lawn Insect Control Plus Fertilizer |
| | 538–140 | Summer Insect and Disease Control Plus Lawn Fertilizer |
| | 538–153 | Scotts Proturf Insect Control Plus Fertilizer |
| | 538–154 | Scotts Summer Insect Control Plus Fertilizer For Lawns |
| Rockland Corporation | 572–213 | Rockland Insecticide for Wood Destroying Pests |
| | 572–219 | Rockland Super Professional Dursban Chinch Bug Killer |
| Indy Specialty Products, Inc. | 654–131 | Klor-Ban Concentrate |
| Prentiss Incorporated | 655–577 | Prentox Residual Insect Spray #2 |
| | 655–739 | Prentox Pyrifos 0.5 Water Base Insecticide |
| | 655–743 | Prentox Pyrifos 1E |
| The Garden Grow Company | 802–530 | Lilly/Miller Chlorban Insect Spray |
| | 802–532 | Lilly/Miller Chlorban Insect Granules |
| | 802–560 | Lilly/Miller 1% Chlorban Insect Granules |
| | 802–595 | Lilly/Miller Hose'n Go Ant, Flea & Tick Killer |
| Southern Agricultural Insecticides, Inc. | 829–250 | Home & Garden Home Pest Control Spray |
| | 829–281 | SA-50 Brand Home Pest Control Concentrate |
| Green Light Company | 869–158 | Green Light Dursban Granules |
| | 869–168 | Green Light Many Purpose Dursban Granules |
| | 869–172 | Green Light Borer Killer II |
| | 869–184 | Green Light Fire Ant Killer |
| | 869–185 | Green Light House Plant Spray II |
| | 869–191 | Green Light Indoor Flea & Tick Spray |
| | 869–205 | Green Light Ready-to-Use Fire Ant Mound Drench |
| | 869–209 | Green Light Dursban 5% Granules |
| | 869–210 | Green Light Double Dursban Granules |
| | 869–221 | Green Light Many Purpose Dursban Concentrate II |
| The Garden Grow Company | 909–94 | Cooke Act Plus Lawn Insecticide |
| | 909–108 | Cooke Ant Barrier |
| Agriliance | 1381–149 | Green Velvet Lawn Food Plus Insect Control |
| Universal Cooperatives, Inc. | 1386–627 | Red Panther Dursban Granular Turf and Lawn Insecticide |
| | 1386–628 | Red Panther Dursban 1 |
| | 1386–659 | Agway Insect Spray |
| I. Schneid | 2155–127 | KR–24 |
| PBI/Gordon Corporation | 2217–646 | Gordon's Dursban Turf Insecticide |
| Sergeant's | 2517–52 | Sergeant's Flea & Tick Collar |
| | 2517–57 | Sergeant's Fast-Acting Flea & Tick Collar for Dogs |
| Hartz | 2596–135 | Hartz 330 Day Flea & Tick Collar for Dogs |
| Wellmark International | 2724–327 | Zoecon RF-150 Yard and Kennel Spray |
| | 2724–486 | Arthitrol 0.5% Dursban (Granular) Ant and Roach Bait |
| Coyne Chemical Company | 3050–136 | Coyne Formula No. 101 |
| ABC Compounding | 3862–93 | Assault |
| | 3862–126 | WB Residual Pressurized Spray |
| BETCO | 4170–78 | RA26 Residual Insecticide Spray |
| Combe Incorporated | 4306–15 | Sulfodene Scratchex Flea and Tick Collar for Dogs |
| Pet Chemicals | 4758–135 | Holiday Flea & Tick Killer |
| S.C. Johnson & Son, Inc. | 4822–152 | Raid Treatment for Crawling Insects |
| | 4822–189 | Raid Liquid Roach & Ant Killer Formula I |
| | 4822–226 | Raid Tree Guard Spray |
| | 4822–230 | Raid Outdoor Flea Killer |
| | 4822–231 | Raid Gypsy Moth & Japanese Beetle Killer II |
| | 4822–232 | Raid Gypsy Moth & Japanese Beetle Killer |
| | 4822–236 | Raid Tree Guard Spray Formula II |
| | 4822–238 | Raid Home Insect Killer Formula II |
| | 4822–263 | Raid Fire Ant Killer |

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 4822–264 | Raid Fire Ant Killer Formula 2 |
| | 4822–275 | Raid Outdoor Insect Killer |
| | 4822–382 | Raid Wasp & Hornet Killer |
| | 4822–390 | Raid Wasp & Hornet Killer Formula XII |
| | 4822–402 | Raid Max Roach Bait III |
| | 4822–412 | Raid Wasp & Hornet Killer ND |
| | 4822–451 | Raid Wasp & Hornet Killer AD |
| | 4822–498 | PA Formula #2 |
| Verdant Brands, Inc | 5887–144 | Black Leaf Dursban |
| | 5887–177 | Ready-to-Use Ant, Roach, Flea and Spider Spray |
| Midco Products Company, Inc. | 6658–42 | Pyreban-3 |
| Carl Pool Products | 6926–11 | Carl Pool Lawn and Turf Food Plus Dursban 15–5–10 |
| Cessco, Inc. | 6959–73 | Cessco ID Residual Insecticide |
| Carter-Wallace, Inc. | 8220–38 | Victory 12 Full Year Collar with Dursban Insecticide for Large Dogs |
| | 8220–39 | Victory II Full Season Cat Collar |
| Robinson Associates | 8278–6 | Metro (Tested) Soildrin D |
| Pursell Industries, Inc. | 8660–10 | Sta-Green Law Pest Control & Fertilizer 25–3–3 |
| | 8660–13 | Sta-Green Lawn Pest Control & Fertilizer A |
| | 8660–14 | Sta-Green Lawn Pest Control & Fertilizer B |
| | 8660–78 | Dursban Lawn Insect Control |
| | 8660–88 | Dursban Granules |
| | 8660–94 | Green Up Insect & Grub Control with Dursban |
| | 8660–97 | Dursban 4E Insecticide |
| | 8660–102 | Dursban Plus |
| | 8660–108 | VertaGreen Dursban—DDVP 1.25 Turf Insecticide |
| | 8660–109 | VertaGreen Dursban—DDVP 2.50 Turf Insecticide |
| | 8660–110 | VertaGreen Home Pest Killer |
| | 8660–122 | Lawn & Ornamental Insect Spray Concentrate |
| | 8660–123 | Vertagreen Dursban 0.5% Granules |
| | 8660–152 | VertaGreen Professional Turf Food with Dursban |
| | 8660–177 | Golden Vigoro Insect Control Plus Lawn Fertilizer |
| | 8660–182 | Green Turf Lawn Food with Insect Control |
| | 8660–193 | Ideal 18 Insect Control Plus Lawn Fertilizer |
| | 8660–194 | Ideal 20 Insect Control Plus Lawn Fertilizer |
| | 8660–195 | Ideal 25 Insect Control Plus Lawn Fertilizer |
| | 8660–203 | Koos Dursban 1.00 Granules |
| | 8660–213 | Par Ex Slow Release Fertilizer Plus Insect Control |
| | 8660–232 | Vigoro 2.32 Insecticide Granules |
| | 8660–239 | Vigoro Granular Cinch Bug Control |
| | 8660–240 | Vigoro Insect Control Plus Lawn Fertilizer for Texas Turf |
| Sherwin-Williams Company | 10900–67 | 858 P.D. Aqueous Roach & Ant Spray |
| Illinois Tool Works, Inc. | 11694–91 | Duramist |
| Speer Products Incorporated | 11715–70 | Speer Roach & Ant Killer |
| | 11715–97 | Magic Guard Dursban Ant & Roach Pressurized Spray |
| | 11715–99 | Magic Guard Ant & Roach Killer |
| | 11715–110 | Mug-A-Bug Professional Strength Insecticide |
| | 11715–132 | Better World Ready-to-use Insecticide |
| | 11715–133 | Mug-A-Bug II Professional Strength Insecticide |
| | 11715–139 | SPI Spot Treatment Spray |
| | 11715–142 | SPI Ant & Roach Spray |
| | 11715–163 | Speer Transparent Emulsion Spray 0.1% + 0.5% |
| | 11715–298 | Pro-Tect Home Pest Control |
| | 11715–299 | Speer Point Five Chlorpyrifos Aerosol |
| | 11715–306 | Speer Cyfluthrin Flea Killer |
| | 11715–312 | Speer D-Trans Residual Spray with Nylar |
| | 11715–324 | SPI Chlorpyrifos Wasp & Hornet Spray |
| | 11715–326 | SPI Chlorpyrifos Pet Area Treatment with Nylar |
| | 11715–327 | Security Granulated Chinch Bug Killer |
| Louisiana Chemical USA, Inc. | 11746–15 | Davis Kill-A-Bug XI |
| | 11746–16 | Davis Kill-A-Bug XII |
| Rainbow Technology Corporation | 13283–8 | Rainbow Insect Control |
| | 13283–15 | Rainbow Liquid RTU Fire Ant Killer |
| Positive Formulators, Inc. | 26693–3 | 6 Months Pest Control |
| | 26693–5 | Killmaster II CC |
| Unicorn Laboratories | 28293–35 | Unicorn 30 Flea Spray |
| | 28293–49 | Unicorn Yard & Kennel Spray Concentrate |
| | 28293–103 | Unicorn House & Carpet Spray WB |
| | 28293–104 | Unicorn Dursban Household Insecticide |
| | 28293–211 | Termi–Chlor Termite Concentrate |
| | 28293–321 | Dursban 1EC Insecticide |
| PBI/Gordon Corporation | 33955–540 | Acme Ant Granules Contains Dursban Insecticide |

TABLE 1.–END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 33955–547 | Acme Dursban Insecticide for Lawns & Ornamentals |
| | 33955–550 | Acme Roach-Rid Brand Home Pest Killer |
| Pet Chemicals | 37425–10 | Adams Surface Spray |
| | 37425–24 | Adams Lawn and Kennel Spray Concentrate |
| Morgro, Inc. | 42057–100 | Dursban (R) Insecticide |
| CCL Industries Inc. | 46813–38 | CCL Crawling Insect Killer I |
| | 46813–42 | CCL Insecticide Foam Spray I |
| Marman USA, Inc. | 48273–16 | Agroban 4E |
| Gro Tec, Inc. | 59144–8 | Ant, Flea & Tick Granules |
| | 59144–9 | Green Charm Dursban 1% Granules |
| | 59144–37 | R & M Yard & Kennel Spray Concentrate |
| Kop-Coat, Inc. | 60061–106 | Woodlife B Clear Wood Preservative |
| Contract Packaging, Inc. | 67572–53 | CP Flea and Brown Dog Tick Granules—S.F. |
| Speer Products Incorporated | 68688–3 | Elite Yard & Kennel Spray |
| | 68688–40 | Elite Dursban 1–12–R144 Insecticide |

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30-day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested cancellations. Given the potential risks, both dietary and nondietary, that chlorpyrifos use poses, especially to children, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

*C. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products*

Pursuant to section 6(f)(1)(A) of FIFRA, several registrants have also submitted requests to amend their other enduse registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses from any product bearing such use. The registrations for which amendments to delete uses were requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

| Company | Reg. No. | Product/SLNs |
|---|---|---|
| Whitmire Micro-Gen Research Laboratories, Inc. | 499–367 | Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos Liquid Concentration |
| | 499–405 | Whitmire PT–1920 Total Release Insecticide |
| | 499–413 | Whitmire TC 100 Intern |
| | 499–419 | Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos |
| The Scotts Company | 538–98 | Proturf 30–5–3 Fertilizer Plus Insecticide III |
| | 538–111 | Proturf Insecticide III |
| | 538–191 | 24–3–3 Fertilizer Plus Insecticide III |
| | 538–226 | Fertilizer Plus Insecticide/Preemergent Weed Control |
| Rockland Corporation | 572–329 | Urban Insect Spray |
| Prentiss Incorporated | 655–441 | Prentox Residual Concentrate DV-One |
| | 655–466 | Prentox Dursban 2E Insecticide |
| | 655–499 | Prentox Dursban 4E Insecticide |
| | 655–696 | Prentox Pyrifos 0.50 RTU |
| | 655–764 | Prentox Dursban 2.32G Granular Insecticide |
| | 655–766 | Prentox Dursban 1/2G Granular Insecticide |
| | 655–786 | Prentox Pyrifos Residual Spray |
| | 655–792 | Prentox D+2 Insecticide |
| | 655–793 | Prentox Super Brand D+2 Insecticide |
| Southern Agricultural Insecticides, Inc. | 829–223 | SA–50 Dursban .5G Granular insecticide |
| | 829–279 | SA–50 Dursban 2-E Insecticide |
| | 829–280 | SA–50 Dursban 4-E Insecticide |
| | 829–291 | SA–50 Brand Dursban 1% Mole Cricket Bait |
| | 829–292 | SA–50 Brand Dursban 2.5% Granular Insecticide |
| ISK Biocides, Inc. | 1022–543 | Chapcide 4-EC |
| Universal Cooperatives, Inc. | 1386–652 | Security Pro-Turf 1 Insect Control Granules |
| | 1386–653 | Security Pro-Turf 2 Insect Control Granules |
| | 1386–613 | Dursban Lawn and Ornamental Insect Control |
| | 1386–615 | Termite Kill II |
| | 1386–649 | Dursban 4E Insecticide |
| Wellmark International | 2724–487 | Arthitrol 0.5% Dursban Paste Bait |
| Cessco, Inc. | 6959–67 | Cessco Accudose Aerosol for Fire Ant Control |

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

| Company | Reg. No. | Product/SLNs |
|---|---|---|
| Knox Fertilizer Company, Inc. | 8378–26 | Dursban 92 with Plant Food |
| | 8378–27 | Dursban 114 + Fertilizer |
| | 8378–28 | Dursban 50 Granular Insecticide |
| | 8378–33 | Dursban 1.14 Granules |
| | 8378–34 | 2.32 Dursban Granules |
| The Andersons, Inc. | 9198–32 | Turf Care for Lawn Maintenance 38–0–0 with Dursban Brand Insecticide |
| | 9198–39 | Turf Care Dursban 2.5G |
| | 9198–68 | The Andersons 1% Dursban Brand Insecticide |
| | 9198–82 | Tee Time Fertilizer with 0.52% Dursban 30–3–5 |
| | 9198–84 | Andersons Tee Time 30–3–5 with 0.65% Dursban |
| | 9198–85 | Tee Time Fertilizer with 0.71% Dursban 30–3–5 |
| | 9198–98 | Andersons Tee Time with Team/Dursban I |
| | 9198–99 | Andersons Tee Time 19–5–9 with Team/Dursban |
| | 9198–127 | Twinlight Professional Dursban Lawn Insect Killer |
| | 9198–132 | The Andersons 0.97% Dursban Brand Insecticide |
| | 9198–137 | The Andersons 0.5% Dursban Brand Insecticide |
| Gowan Company | 10163–158 | Gowan Chlorpyrifos 4E |
| Lesco, Inc. | 10404–15 | Lesco 2.32 Granular Insecticide |
| | 10404–27 | Lesco 40–0–0 Fertilizer with Dursban |
| | 10404–29 | Lesco 32–5–7 Fertilizer with Dursban |
| | 10404–40 | Lesco 20–0–10 Fertilizer with Dursban |
| | 10404–67 | Lesco 1% Dursban Granular |
| | 10404–81 | Lesco 0.97 Dursban Granules |
| Sungro Chemicals, Inc. | 11474–40 | Sungro Reside Du |
| | 11474–55 | Sungro Combo Water Base |
| | 11474–66 | Sungro Dursbo |
| | 11474–90 | Sungro Buggone II Residual Insecticide |
| Rainbow Technology Corporation | 13283–14 | Rainbow Fire Ant Killer |
| | 13283–17 | Rainbow KO Fire Ant Killer |
| Drexel Chemical Company | 19713–504 | Regatta 4E |
| Positive Formulators, Inc. | 26693–2 | Killmaster II |
| Unicorn Laboratories | 28293–87 | Unicorn House and Carpet Spray |
| | 28293–99 | Unicorn Dursban Spray |
| | 28293–121 | Unicorn Dursban—Resmethrin Spray |
| | 28293–142 | Unicorn Kennel Spray |
| | 28293–149 | Unicorn House and Carpet Spray II |
| | 28293–200 | Unicorn Dursban 2E |
| | 28293–201 | Unicorn Dursban 2.5% Granules |
| | 28293–202 | Unicorn Dursban 1.0% Granules |
| | 28293–203 | Unicorn Dursban 1%-D Dust |
| | 28293–204 | Unicorn Dursban 4E |
| | 28293–205 | Unicorn Dursban 1–12 |
| | 28293–210 | Dursban 1E Insecticide |
| | 28293–265 | Unicorn Dursban 6.7% Insecticide |
| | 28293–266 | Dursban Plus Resmethrin Concentrate |
| Howard Johnson's Enterprises, Inc. | 32802–19 | Dursban Insecticide 0.7 Plus Fertilizer |
| | 32802–20 | Dursban 1.14 Granular Lawn and Turf Insect Control |
| | 32802–21 | Dursban 1.14 Plus Lawn Fertilizer |
| | 32802–22 | Dursban 2.32G |
| | 32802–39 | Dursban .5 Granules Insecticide |
| | 32802–49 | Dursban 100 Granules |
| Phaeton Corporation | 47006–5 | Orlik Dursban granules |
| Marman USA, Inc. | 48273–13 | Pestban 2E |
| | 48273–14 | Pestban TC |
| | 48273–19 | Pestban 4E |
| Biodyne Americas Corporation | 59920–1 | Super IQ Insecticide Coating APT |
| | 59920–2 | Super IQ Insecticide Coating LC |

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested amendments to delete uses. Given the potential dietary and nondietary risks that chlorpyrifos use poses, especially to children, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement.

## III. Proposed Existing Stocks Provisions

The registrants have requested voluntary cancellation of the chlorpyrifos registrations identified in Table 1 and voluntary amendment to terminate certain uses of the chlorpyrifos registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant the

requests for voluntary cancellation and amendment. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term existing stocks will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, Wednesday, June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and /or 12(a)(1)(A) of FIFRA.

1. *Distribution, sale or use of products bearing instructions for use on apple trees post-bloom* . The distribution or sale of existing stocks by any person of any product listed in Table 1 or 2 that bears instructions for post-bloom application to apple trees (other than tree trunk use) will not be lawful under FIFRA after December 31, 2000. The use of existing stocks of such product for post-bloom application to apple trees (other than tree trunk use) will not be lawful under FIFRA after December 31, 2000. Any other use of such product until that date must be in accordance with the existing labeling of that product.

2. *Distribution or sale by registrants of products bearing other uses*— (a) *restricted use and package size limitations* . (i) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 1 or 2 will not be lawful under FIFRA after February 1, 2001 unless the product is labeled as restricted use.

(ii) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled for any agricultural use and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(iii)The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled solely for nonagricultural uses (other than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(b) *Prohibited uses.* The distribution or sale of existing stocks by registrants of any product identified in Table 1 or 2 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(i) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos enduse dilution;

(ii) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002;

(iii) Indoor residential except for containerized baits in CRP;

(iv) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, or food processing plants;

(v) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: Individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(vi) Outdoor non-residential except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts and processed wood products.

3. *Retail and other distribution or sale* . The retail distribution of existing stocks of products listed in Table 1 or 2 bearing instructions for the prohibited uses set forth above in Unit III.2.(b)(i)(vi) of this Notice will not be lawful under FIFRA after December 31, 2001. Except as provided in the previous sentence or in Units III.1. and III.4. of this Notice, EPA intends to permit distribution or sale of products identified in Table 1 or 2 by persons other than registrants until such stocks are exhausted.

4. *Final distribution, sale and use date for pre-construction termite control.* The distribution, sale or use of any product listed in Table 1 or 2 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks* . Except as provided above in Units III.1. and III.4., EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

**List of Subjects**

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: November 8, 2000.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–29511 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6904–1]**

## Proposed CERCLA Administrative Cashout Settlement; Energynorth Natural Gas, Inc., and Public Service of New Hampshire, Nashua River Asbestos Site, Nashua, NH

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Nashua River Asbestos Site in Nashua, New Hampshire with the following settling parties: EnergyNorth Natural Gas, Inc., and Public Service of New Hampshire. The settlement requires the settling party to pay $787,341.76 to the Hazardous Substance Superfund plus an additional sum for interest on that amount calculated from December 31, 1999 through the date of payment. The settlement includes a covenant not to sue the settling party pursuant to Sections 106 and 107(a) of CERCLA,'' 42 U.S.C. 9606 and 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214–2023.

**DATES:** Comments must be submitted on or before December 18, 2000.

**ADDRESSES:** Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203 and should refer to: In re: Nashua River Asbestos Site, U.S. EPA Docket No. I–99–0044.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed settlement may be obtained from Steven Schlang, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100, Mailcode SES, Boston, MA 02114–2023.

Dated: September 29, 2000.

**Richard Cavagnero,**

*Acting Director, Office of Site Remediation & Restoration.*

[FR Doc. 00–29509 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–OW–6903–2]**

## Notice of Intent To Develop Ambient Water Quality Criteria for Protection of Human Health—Methylmercury; Notice of Reopening to Public Comment Period

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

**ACTION:** Notice of reopening to public comment period.

**SUMMARY:** This notice informs the public that the period for the submission of scientific and technical information for the development of the revised Ambient Water Quality Criterion for Methylmercury is extended.

**DATES:** The comment period has been extended fifteen days to November 27, 2000.

**ADDRESSES:** Send an original and three copies of any written significant scientific information to W–00–29 Comment Clerk, Water Docket, Ariel Rios 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460. Comments may be hand-delivered to the Water Docket, Room EB57, 401 M Street, SW, Washington, D.C. 20460. Issues may also be submitted electronically to *OW-Docket@epa.gov.* Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Manibusan, Health and Ecological Criteria Division (4304), US EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460; (202) 260–3688; *manibusan.mary@epa.gov*

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency published in the **Federal Register** of October 12, 2000 (65 FR 60664), that scientific and technical information that pertains to the development of a revised Ambient Water Quality Criterion for Methylmercury should be received within 30 days of the **Federal Register** publication date of October 12, 2000. In response to public interest, the Environmental Protection Agency has granted a fifteen day extension to the public comment period.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

[FR Doc. 00–29504 Filed 11–16–00; 8:45 am]

BILLING CODE 6560–50–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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, November 21, 2000, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interim Rule (amending Appendix C to Part 325) to Revise the Risk-Based Capital Treatment for Securities Borrowing Transactions.

*Discussion Agenda*

Memorandum and resolution re: Final Regulation Prescribing Consumer Protections for Bank Sales of Insurance.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

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: November 14, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–29548 Filed 11–4–00; 5:03 pm]

BILLING CODE 6714–01–M

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:**

### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Request for Comment on Information Collection Proposals**

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before January 16, 2001.

**ADDRESSES:** Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, submitted by electronic mail to regs.comments@federalreserve.gov, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Draft copies of the proposed reporting forms may be obtained at the Board's web site (www.federalreserve.gov). Draft copies of the proposed forms, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal To Approve Under OMB Delegated Authority the Revision, Without Extension, of the Following Reports**

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies.

*Agency form number:* FR Y–9C.

*OMB control number:* 7100–0128.

*Frequency:* Quarterly.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 231,474.

*Estimated average hours per response:* 33.45.

*Number of respondents:* 1,730.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently data reported on the FR Y–9C, Schedule HC–H, Column A, requiring information of ''assets past due 30 through 89 days and still accruing'' and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

*Abstract:* The FR Y–9C consists of standardized consolidated financial statements similar to commercial bank Report of Condition and Income (Call Report) (FFIEC 031–034; OMB No. 7100–0036). The FR Y–9C is filed quarterly by top-tier bank holding companies that have total assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

*Current actions:* The Federal Reserve proposes to implement numerous revisions that will streamline the existing reporting requirements. These eliminations and reductions in detail will help the Federal Reserve achieve the objective set forth in Section 307(c) of the Riegle Community Development and Regulatory Improvement Act of 1994, which directs the banking agencies to review the information that institutions currently report in the Call Report and the bank holding company (BHC) reports and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

As part of the streamlining process, the Federal Reserve proposes several reporting changes that will introduce more uniformity to certain aspects of regulatory reporting. These changes would provide more uniformity within the holding company reports and also would bring several items into closer alignment with the Call Report and the Thrift Financial Report. For example, standard loan categories would be used for all of the schedules that collect loan information. However, not all loan-related items are needed on all schedules for supervisory purposes. Other proposed modifications to the BHC reports are intended to make its form and content more closely resemble the manner in which information is presented in financial statements that banks prepare in accordance with generally accepted accounting principles (GAAP) for other financial reporting purposes.

In addition to streamlining the existing FR Y–9C reporting requirements by eliminating information that is no longer of significant value, the Federal Reserve is also endeavoring to improve the relevance of the FR Y–9C by identifying new types of information that are considered critical to the Federal Reserves' supervisory data needs going forward. In so doing, the Federal Reserve has focused primarily on new activities and other recent developments that may expose institutions to new or different types of risk.

Furthermore, by proposing the following new reporting requirements at the same time as the FR Y–9C streamlining changes, BHCs will be able to make all of the necessary systems changes at one time. However, the new reporting requirements would be implemented on the same schedule as the Call Report. The Federal Reserve believes that combining these various types of revisions into a single package should result in lower start-up costs and

reporting burden for BHCs from a system's perspective.

The Federal Reserve proposes to make the following changes to the FR Y–9C, except for new information on securitization activities, effective with the March 31, 2001, reporting date. Proposed new information on securtization activities would be effective with the June 30, 2001, reporting date.

**Changes Related to Proposed Changes to the Call Report [1]**

*Schedule HC—Consolidated Balance Sheet*

1. Move ''Loans and leases held for sale'' onto the balance sheet as a separate category under item 4, ''Loans and lease financing receivables.'' This change will bring the FR Y–9C balance sheet presentation of these loans into conformity with GAAP. Loans and leases held for sale are currently included on the balance sheet in item 4.a, ''Loans and leases, net of unearned income,'' together with loans that the holding company has the intent and ability to hold for the foreseeable future or until maturity or payoff. However, loans and leases held for sale are separately identified in the loan schedule in Schedule HC–B, part I, Memorandum item 3. Loans and leases held for sale would continue to be reported with the holding company's other loans in the loan schedule (Schedule HC–B, part I).

2. Item 4.c, ''Allocated transfer risk reserve,'' would be deleted from the balance sheet, but would be reported in the new regulatory capital schedule, which is discussed below. BHCs would report their loans and leases net of any allocated transfer risk reserve in the loan schedule (Schedule HC–B, part I).

3. Items 27.e, ''Net unrealized holding gains (losses) on available-for-sale securities,'' 27.f, ''Accumulated net gains (losses) on cash flow hedges,'' and 27.g, ''Cumulative foreign currency translation adjustments,'' would be combined and reported as ''Accumulated other comprehensive income.'' [2] This change would conform the presentation of the equity capital section of the FR Y–9C balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

4. A new item for ''Other equity capital components'' would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. These items will continue to be reported separately in the proposed revised regulatory capital schedule. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

*Schedule HC–A—Securities*

1. Add new items on fair value and amortized cost information for six categories of asset-backed securities that are currently included in the items for ''Debt securities.'' The six categories that would be reported on Schedule HC–A, item 5, are securities backed by: a. credit card receivables, b. home equity lines, c. auto loans, d. other consumer loans, e. commercial and industrial loans, and f. all other loans. The Federal Reserve proposes to collect information to facilitate more effective assessments of BHC credit and other exposures related to their portfolios of asset-backed securities. Currently, virtually all non-mortgage asset-backed securities are reported in two FR Y–9C items, *i.e.,* Schedule HC–A, items 4.a and 5.a, U.S. and foreign ''Debt securities.'' The proposed segregation of specific categories of asset-backed securities from ''Debt securities'' would promote risk-focused supervision by enhancing the Federal Reserves' ability to assess credit exposures and asset concentrations.

2. Memoranda items 4.a., ''Net unrealized holding losses on available-for-sale equity securities with readily determinable fair values' and 4.c., ''Amount of net unrealized holding gains on available for sale equity securities'' would be moved to the new regulatory capital schedule, which is discussed below.

3. Memoranda item 9.c, ''All other equity securities,'' (equity securities without readily determinable fair values), would be moved to a new Schedule HC–F—Other Assets. These equity securities are outside the scope of FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities. Therefore, including them in the FR Y–9C with available-for-sale securities in Schedule HC–A, albeit at historical cost rather than at fair value, has not been consistent with GAAP. Moving equity securities without readily determinable fair values to the Memoranda schedule is intended to eliminate this inconsistency.

*Schedule HC–B, Part I—Loans and Leases*

1. The definition of ''Construction and land development'' loans (item 1.a) and, hence, the definitions for the other categories of loans secured by real estate (items 1.b through 1.e) would be revised to make them consistent with reporting requirements in this area for savings associations as reported on the Thrift Financial Report. The FR Y–9C instructions for ''Construction and land development'' loans currently direct BHCs to exclude from this loan category loans to acquire and hold vacant land and construction loans with original maturities greater than 60 months. These two types of loans are instead reported as loans secured by farmland, 1–4 family residential properties, multifamily residential properties, or nonfarm nonresidential properties, as appropriate. The definitions for the five categories of ''Loans secured by real estate'' would be revised so that land loans and long-term construction loans are reported in a recaptioned item 1.a, ''Construction, land development, and other land loans.''

2. The separate loan categories for ''Loans to depository institutions'' and ''Acceptances of other banks'' (items 3 and 4, respectively) would be combined.

3. Item 6.a, column A, ''Credit cards and related plans'' to individuals for household, family, and other personal expenditures, would be split into separate loan categories for ''Credit cards'' and ''Other revolving credit plans.''

4. A single Memorandum item for the total amount of a BHC's ''Loans and leases restructured and in compliance with modified terms'' would replace the multiple Memorandum items in which BHCs must currently report information about such restructured credits (Memorandum items 1.a through 1.h.) Restructured loans secured by 1–4 family residential properties and restructured consumer loans would be excluded from the revised Memorandum item.

5. A new Memoranda item 3, ''Loans secured by real estate to non-U.S. addressees (domicile)'' would be added in order to enhance the Federal Reserve's ability to evaluate the performance of real estate loans by addressee.

6. The filing criteria for Part II, Trading Assets and Liabilities, would be modified. BHCs that report a quarterly average for trading assets of $2 million or more (new proposed item 4.a, Schedule HC–E) as of the March 31st

[1] Schedule lettering and titles used throughout this notice refer to existing schedules. However, the Federal Reserve also proposes to alter schedule order and schedule titles to align with the Call Report.

[2] The first two of these components of ''Accumulated other comprehensive income'' would be separately identified in the proposed new regulatory capital schedule.

report date of the current calendar year would complete Schedule HC–B, Part II. Analysis of quarter-end trading assets data indicate that using this reporting threshold would provide adequate coverage of BHCs actively involved in trading and would be comparable to the coverage of bank trading activity proposed for the Call Report. In addition, Part II, Trading Assets and Liabilities, would be formatted as a separate Schedule HC–D, to be consistent with presentation in the Call Report.

*Schedule HC–F—Off-Balance-Sheet Items*

1. The two-way breakout of Part I, item 2, ''Standby letters of credit and foreign office guarantees,'' between item 2.a.(1), ''To U.S. addressees,'' and 2.a.(2), ''To non-U.S. addressees,'' would be eliminated and replaced with a single combined item.

2. Part II, Item 3, ''Securities borrowed,'' would no longer be collected from all BHCs. Instead, the amount of borrowed securities that exceed 10 percent of total equity capital [3] would be reported in renumbered item 9, ''All other significant off-balance-sheet items.''

3. The information collected in Part II, items 5.a, 5.b, and 5.c on the outstanding principal balance of and amount of recourse on three categories of financial asset transfers would be moved from Schedule HC–F and incorporated into the proposed new schedule on securitization and asset sale activities, which is discussed below.

4. Part II, Item 6.b, ''Participations in acceptances acquired by the reporting BHC,'' and Memorandum item 1, ''Participations in unused commitments'' would be deleted from Schedule HC–F, and information would be collected only on the proposed new regulatory capital schedule discussed below. Memorandum item 1 would be redefined to collect information on commitments with an original maturity exceeding one year on the new regulatory capital schedule.

5. Part III, Item 3.b for the gross notional amount of derivative contracts held for purposes other than trading that are not marked to market would be deleted. All derivative contracts, including those held for purposes other than trading, will be marked to market once a BHC adopts FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. Thus, item 3.b will no longer have any relevance in 2001.

6. Part III, items 4.c.(1) and (2) for the gross positive and gross negative fair values of derivatives held for purposes other than trading that are not marked to market would be deleted because of the effect of FASB Statement No. 133.

In addition, items on Schedule HC–F would be renumbered and formatted to better align with the order of items presented on Schedule RC–L, Off-Balance-Sheet Items, on the Call Report.

*Schedule HC–G—Memoranda*

1. The scope of item 14, ''Income earned, not collected on loans,'' would be expanded to cover all ''Accrued interest receivable,'' and the item would be included on a new ''Other Assets'' schedule discussed below. Broadening this category to include interest earned, not collected on earning assets other than loans would be more consistent with the typical presentation of accrued interest receivable in financial statements prepared for other financial reporting purposes.

2. Memorandum item 19, ''Deferred tax assets in excess of regulatory capital limits,'' would be retitled as ''Disallowed deferred tax assets'' and moved to the revised regulatory capital schedule (Schedule HC–R), which is discussed below. This proposed change is part of an effort by the Federal Reserve to place all items collected principally for regulatory capital calculation purposes in a revised regulatory capital schedule rather than having these items scattered across various FR Y–9C schedules as they are at present.

3. Items 17.a through 17.d, in which banks report a six-way breakdown of the ''Outstanding principal balance of 1–4 family residential mortgage loans serviced for others' would be moved from Schedule HC–G and condensed into a two-way servicing breakdown in the proposed new schedule on securitization and asset sale activities, which is discussed below.

4. Items 20.a through 20.f, which collect data on quarterly sales of annuities, mutual funds, and proprietary products, would be eliminated. In place of these items, each BHC would respond to a ''yes'' or ''no'' question asking whether it sells private label or third party mutual funds and annuities. In addition, BHCs would report the total assets under the reporting BHC's management in proprietary mutual funds and annuities. For BHCs with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products.

5. Item 22, ''Net unamortized realized deferred gains (losses) on off-balance-sheet derivative contracts included in assets and liabilities reported in Schedule HC,'' would be eliminated.

*Schedule HC–H—Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets*

1. The presentation of loan category information would be modified to better match the loan schedule (HC–B) as proposed by moving the current breakdown of loans secured by real estate from the Memoranda section of Schedule HC–H, item 4, to item 1 of Schedule HC–H, and item 5.a would be redefined to exclude related plans, which would be reported in item 5.b. In addition BHCs would separately report their past due and nonaccrual loans secured by real estate in foreign offices. Also the presentation order and certain item captions would be revised to better align with Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, on the Call Report.

2. Memorandum item 6.b, ''Replacement cost of [past due derivative] contracts with a positive replacement cost,'' would be deleted. Once BHCs adopt FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, all of their derivative contracts will be carried on the balance sheet at fair value. Since the replacement cost of a derivative contract is its fair value and its book value will also be its fair value, Memorandum items 6.a., ''Book value of amounts carried as assets,'' and 6.b would duplicate each other. The caption for Memorandum item 6.a would be revised to read ''Fair value of amounts carried as assets.''

3. Eliminating confidential treatment for certain past due and nonaccrual data: The Federal Reserve proposes to eliminate the confidential treatment for items past due 30 to 89 days and restructured items beginning with amounts reported as of March 31, 2001. An important public policy issue for the Federal Reserve has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having information about the risks and financial condition of banking organizations. The FR Y–9C, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of BHC-specific data. Disclosure that increases transparency should lead to more accurate market assessments of

[3] As described below, the Federal Reserve proposes to eliminate this reporting threshold.

risk and value. This, in turn, should result in more effective market discipline on BHCs.

Despite this emphasis on market discipline, the Federal Reserve currently accords confidential treatment to the information BHCs report in Schedule HC–H of the FR Y–9C on the amounts of their loans, leases, and other assets that are past due 30 to 89 days and still accruing and on the amount of restructured loans and leases that are past due 90 days or more and still accruing or in nonaccrual status. This is the only financial information currently collected on the FR Y–9C that is treated as confidential on an individual BHC basis. In contrast, the information BHCs report on the amounts of their loans, leases, and other assets that are 90 days or more past due and still accruing or that are in nonaccrual status has been publicly available. The Federal Reserve proposes to make all past due and restructured loan and lease information publicly available in order to give the public, including BHCs, more complete information on the level of and trends in asset quality at individual institutions.

Some banking organizations have held that information on loans, leases and other assets that are past due 30 to 89 days is not a reliable indicator of future loan losses or of general asset quality. They further note that market discipline would be reduced, rather than enhanced, by the release of information that is highly susceptible to misinterpretation to the extent that it could cause an unjustifiable loss of funding to the industry. However, banking supervisors have consistently found information on loans and leases past due 30 to 89 days to be helpful in identifying banks with emerging asset quality problems. Therefore the Federal Reserve believes that such information is a useful indicator of general asset quality and would not represent misleading information to the public. Moreover, BHCs have the option to include in their notes to the balance sheet a brief narrative statement that provides explanatory comments about any data disclosure which they feel may be subject to misinterpretation, the text of which is available to the public.

*Schedule HC–I—Risked-Based Capital*

The Federal Reserve proposes to revise the risk-based capital schedule (Schedule HC–I) by incorporating many of the reporting concepts of the FR Y–9C's optional regulatory capital worksheet. All top-tier BHCs with total consolidated assets of $150 million or more would continue to be required to complete the entire revised regulatory capital schedule. The proposed schedule will also more directly correspond to the proposed commercial bank Regulatory Capital schedule on the Call Report. Schedule HC–I would also be retitled ''Regulatory Capital'' and relabeled Schedule HC–R.

In general, the proposed revised format would use a systematic, step-by-step building block approach under which BHCs would report the various components and adjustments that determine Tier 1, Tier 2, and total capital, as well as risk-weighted assets. This means that all regulatory capital ratios—the Tier 1 leverage ratio, the Tier 1 risk-based capital ratio, and the total risk-based capital ratio—would be derived directly from the items that BHCs report on this schedule. These ratios would also be disclosed in the schedule. The carrying values of all on-balance-sheet asset values and the face value or notional amount of most off-balance-sheet items used in the capital calculations would function as ''control totals'' and banks would allocate these amounts to the appropriate risk weight categories in accordance with the risk-based capital guidelines.

Existing items in Part III require the reporting of the major capital categories—Tier 1, Tier 2, Tier 3, and total risk-based capital—as well as risk-weighted assets and average total assets, which is used in the Tier 1 leverage ratio. The amounts reported in these existing items should be the amounts determined by BHCs for their own internal capital analyses consistent with the applicable capital standards. These items (Part III items 1.a through 4) are so-called self-reported capital items. The first part of the proposed revised regulatory capital schedule would essentially replicate the steps that BHCs are already going through to determine the major capital categories on a self-reported basis and therefore should not impose significant additional reporting burden. Moreover, to facilitate this proposed step-by-step building block approach to computing these capital categories, the Federal Reserve proposes to move a number of items that are collected principally for regulatory capital calculation purposes from their currently scattered locations in other FR Y–9C schedules to their more logical position in the proposed revised capital schedule. For example, as previously discussed the item for ''Deferred tax assets in excess of regulatory capital limits'' that is currently collected in Schedule HC–G—Memoranda, would now be included in the proposed revised Schedule HC–I (and retitled as ''Disallowed deferred tax assets'').

Overall, the Federal Reserve believes that the proposed revisions to the regulatory capital schedule provide a rational, systematic approach to reporting the elements of capital as well as the components of risk-weighted assets. The proposed approach should offer both enhanced and efficient reporting for both BHCs and users of the FR Y–9C report.

*Schedule HC–S—Securitization and Asset Sale Activities*

The Federal Reserve proposes to revise and expand the information collected in the FR Y–9C to facilitate more effective analysis of the impact of securitization and asset sale activities on BHC credit exposures. In this regard, the Federal Reserve proposes to introduce a separate new schedule (Schedule HC–S) effective with the June 30, 2001, reporting date that would comprehensively capture information related to BHC securitization and asset sale activities. At present, the FR Y–9C includes several items in various schedules that are used to assess BHC involvement in securitization and asset sale activities. The items generally focus on the securitization and sale of 1–4 family residential mortgages and consumer loans. However, over the past few years, the scope and volume of BHC asset securitization activities have expanded significantly beyond the traditional 1–4 family residential mortgage and consumer loan areas into other areas, most notably into the areas of home equity and commercial lending.

Under this proposal, BHCs involved in securitization and asset sale activities would report quarter-end (or year-to-date) data for seven loan categories similar to the manner in which they report their loan portfolios. These data would cover 1–4 family residential loans, home equity lines, credit card receivables, auto loans, other consumer loans, commercial and industrial loans, and all other loans and leases. For each loan category, BHCs would report: (1) The outstanding principal balance of assets sold and securitized with servicing retained or with recourse or seller-provided credit enhancements, (2) the maximum amount of credit exposure arising from recourse or credit enhancements to securitization structures (separately for those sponsored by the reporting institution and those sponsored by other institutions), (3) the past due amounts and charge-offs and recoveries on the underlying securitized assets, (4) the amount of any commitments to provide liquidity to the securitization structures, (5) the outstanding principal balance of assets sold with servicing retained or

with recourse or seller-provided credit enhancements that have not been securitized, (6) the amount of ownership (or seller's) interests carried as securities or loans, and (7) the maximum amount of credit exposure arising from assets sold with recourse or seller-provided credit enhancements that have not been securitized. A limited amount of information would also be collected on BHC credit exposures to asset-backed commercial paper conduits. For the home equity line, credit card receivable, and the commercial and industrial loan categories, BHCs would also report the amount of any ownership (or seller's) interests in securitizations that are carried as securities and the past due amounts and charge-offs and recoveries on the assets underlying these seller's interests.

At present, BHCs report certain information related to securitizations, asset sales, and servicing in current Schedule HC–F—Off-Balance Sheet Items and Schedule HC–G—Memoranda. To avoid the loss of this information until the delayed effective date of new Schedule RC–S, these existing items will be moved into and reported in the Memoranda section of Schedule HC–S for the March 31, 2001, report date. These existing items and what will happen to them after they are collected in the March 31, 2001, FR Y–9C are as follows:

1. Schedule HC–F, items 5.a.(1) and (2) and items 5.b.(1) and (2)—in which BHCs report the outstanding principal balance and amount of recourse exposure on (a) ''First lien 1–4 family residential mortgage loans'' and (b) ''Other financial assets'' that have been transferred with recourse and are treated as sold—will be collected in Schedule HC–S, Memorandum items 4.a.(1) and (2) and items 4.b(1) and (2), for the final time as of March 31, 2001.

2. Schedule HC–F, items 5.c.(1) and (2)—in which BHCs report the outstanding principal balance and amount of retained recourse on ''Small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994''—will be collected in Schedule HC–S, Memorandum items 1.a and 1.b, as of March 31, 2001, and thereafter.

3. Schedule HC–G, item 17—in which BHCs provide a six-way breakdown of the ''Outstanding principal balance of 1–4 family residential mortgage loans serviced for others'' by type of servicing contract—will be collected in condensed form in Schedule HC–S, Memorandum items 2.a and 2.b, as of March 31, 2001, and thereafter. In addition item 2.c, which is not currently reported in the FR Y–9C, would begin to be reported as of June 30, 2001, consistent with the proposed reporting for Schedule RC–S.

*Schedule HI—Consolidated Income Statement*

2. Report the combined amount of tax-exempt loan and lease income in a single income statement item, Memoranda item 3. This would mean that, going forward, the body of the income statement (Schedule HI) would contain only two items for interest and fee income from loans (item 1.a.(1), ''In domestic offices'' and item 1.a.(2), ''In foreign offices, Edge and Agreement subsidiaries, and IBFs'') and a single item (item 1.b) for income from lease financing receivables.

2. The breakout of interest income on balances due from depository institutions (by domestic versus foreign offices) would be eliminated. Currently, this information is reported in Schedule HI, items 1.c.(1) and 1.c.(2). Going forward, there would only be a total reported for this information.

4. The number of categories of securities income that BHCs are required to report would be reduced. BHCs would report their income for the three following categories of securities in the body of the income statement: (a) U.S. Treasury securities and U.S. government agency obligations, (b) Mortgage-backed securities, and (c) All other securities. BHCs would report their ''Income on tax-exempt securities issued by states and political subdivisions in the U.S.'' in a new income statement Memorandum item 4 rather than in the income statement (Schedule HI) itself.

5. Item 2.c, ''Interest on borrowed funds,'' would be retitled ''Interest on trading liabilities and other borrowed money.'' The instructions for this item also would be clarified to include trading liabilities.

6. Item 4.a, ''Provision for credit losses,'' would be revised so that it includes only the provision for loan and lease losses. BHCs would report any provision for credit losses on off-balance-sheet exposures in item 7.e, ''Other noninterest expense'' and they would itemize and describe this provision in Memoranda item 7, if it is significant.

7. Item 4.b, ''Provision for allocated transfer risk,'' would be eliminated as a specific income statement item. BHCs would report any provision for allocated transfer risk in ''Other noninterest expense'' and itemize and describe it in Memoranda item 7 if it is significant.

8. Noninterest income: Board staff proposes to add several new noninterest income categories to those currently collected in the FR Y–9C income statement (Schedule HI). Noninterest income has grown substantially over the last few years as a source of revenue for BHCs. A more detailed breakdown of noninterest income would provide the Federal Reserve with valuable supervisory information on the amount and type of fee-generating activities within the BHC.

These categories were selected in part based on a review of noninterest income information currently reported by BHCs in Schedule HI, Memoranda items 5 and 6. In these items, BHCs must itemize and describe, using their own terminology, their most significant categories of ''Service charges, commissions, and fees'' and ''Other noninterest income.'' Two of the proposed new income statement categories represent items, or modifications of items, for which specific preprinted captions currently appear in Schedule HI (Memoranda items 6.a and 6.b). As a result, these items would no longer be reported in the Memoranda section of Schedule HI. The categories of noninterest income that would be added as specific items on the FR Y–9C income statement are: (1) Investment banking, advisory, brokerage, and underwriting fees and commissions, (2) venture capital revenue, (3) net servicing fees, (4) net securitization income, (5) insurance commissions and fees, (6) net gains (losses) on sales of loans, (7) net gains (losses) on sales of other real estate owned, and (8) net gains (losses) on sales of other assets (excluding securities). The current income statement item for ''Other service charges, commissions, and fees'' (item 5.b.(2)) would be discontinued. The new noninterest income items would provide greater comparability among the categories of noninterest income currently reported by BHCs. Some of the proposed noninterest income categories would represent the only information provided in the FR Y–9C on certain activities. By collecting more detailed noninterest income data, the significance of each of these activities can be compared to other income-generating activities of the BHC.

9. New item 7.c, ''Amortization expense of intangible assets,'' would be added to the income statement (Schedule HI).

10. In Schedule HI—Memoranda, the threshold for itemizing and describing significant components of ''Other noninterest income'' and ''Other noninterest expense'' in items 6 and 7 would be changed to 1 percent of the total of interest income and noninterest

income from the current threshold of 10 percent of other noninterest income and 10 percent of other noninterest expense, respectively. This revised threshold is consistent with the Securities and Exchange Commission's threshold for the disclosure by bank holding companies of components of other noninterest income and expense.

11. Similar to the reporting revision proposed to Schedule HC–B, Part II, Trading Assets and Liabilities, the filing criteria for Memoranda item 9, ''Trading revenue,'' would be revised to require BHCs to complete Memoranda item 9 only if they report a quarterly average for trading assets of $2 million or more as of the March 31st report date for the current calendar year.

12. The instructions for Memorandum items 10.a through 10.c that request BHCs to disclose the impact of derivatives held for purposes other than trading on interest income, interest expense, and noninterest income (expense) would be revised. For reporting beginning in 2001 when FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, is in effect, all derivatives would be reported on the balance sheet at fair value and the accounting for fair value and cash flow hedges under Statement No. 133 differs from current hedge accounting practices.

In addition, certain item captions would be modified to better align with similar information reported on the bank Call Report Income Statement.

*Schedule HI–A—Changes in Equity Capital*

1. The manner in which the previous year-end balance of equity capital is reported in this schedule so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, BHCs must report the ''Equity capital end of previous calendar year'' in the FR Y–9C in item 1. If the BHC has filed any amendments to this previous year-end FR Y–9C report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 2, and the amended equity capital balance for the previous year-end is reported in item 3. The Federal Reserve proposes to eliminate item 2 and, in effect, have BHCs report what is now reported in item 3 as their previous year-end equity capital balance. Thus, as Schedule HI–A would be revised, BHCs would report ''Equity capital most recently reported for the end of the previous calendar year'' in item 1. The Federal Reserve also proposes to combine item 11, ''Cumulative effect of changes in accounting principles from prior years,'' and item 12, ''Corrections of material accounting errors from prior years,'' and designate the combined items as item 2, ''Restatements due to corrections of material accounting errors and changes in accounting principles,'' of revised Schedule HI–A. The next item in revised Schedule HI–A (item 3) would then be captioned ''Balance end of previous calendar year as restated.''

2. Items 13.a, ''Change in net unrealized holding gains (losses) on available-for-sale securities,'' 13.b., ''Change in accumulated net gains (losses) on cash flow hedges,'' and 18, ''Foreign currency translation adjustments'' would be combined and replaced by an item for ''Other comprehensive income.'' This item would also include any minimum pension liability adjustment recognized during the year-to-date in accordance with GAAP, which BHCs currently have to report elsewhere in Schedule HI–A. Identifying ''Other comprehensive income'' in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

In addition, Schedule HI–A would be renumbered and certain captions would be modified to better align with the Changes in Equity Capital schedule on the Call Report.

*Schedule HI–B—Charge-Offs and Recoveries on Loans and Leases and Changes in Allowance for Credit Losses*

1. The presentation of loan category information would be modified to better match the loan schedule (HC–B) as proposed by moving the current breakdown of loans secured by real estate from the Memoranda section of Schedule HI–B, item 1, to item 1 of Schedule HI–B, and item 5.a would be redefined to exclude related plans which would be reported in item 5.b. In addition BHCs would also separately report their charge-offs and recoveries of loans secured by real estate in foreign offices. Also the presentation order and certain item captions would be revised to align with the Charge-Offs and Recoveries schedule on the Call Report.

2. The scope of Part II would be revised to cover changes in the allowance for loan and lease losses rather than the entire allowance for credit losses. In addition, similar to the proposal discussed above for Schedule HI–A—Changes in Equity Capital, the manner in which the previous year-end balance of the allowance is reported in Schedule HI–B, Part II, would be changed so that it better corresponds with its presentation in financial statements prepared in accordance with GAAP. At present, BHCs report the balance of the allowance as ''originally reported'' in their previous year-end FR Y–9C report in item 1. The effects of any amendments to the previous year-end FR Y–9C on the allowance as originally reported are included in item 3, ''Adjustments.'' Item 1 would be revised to eliminate the need to report these adjustments from amended FR Y9–C reports in item 3. Thus, BHCs would report the ''Balance most recently reported at end of previous year'' for the year-end allowance for loan and lease losses in item 1.

3. Schedule HI–B, Part II, Memorandum item 1, ''Credit losses on off-balance-sheet derivative contracts,'' would be retitled ''Credit losses on derivatives'' and moved to Schedule HI, memoranda item 11.

**Other Revisions Not Related to Call Report Changes**

The following proposed revisions are not directly related to the proposed Call Report changes for March 2001. Most of these changes are proposed to provide greater consistency with current Call Report items that are not part of the March 2001 revisions.

*Schedule HC—Consolidated Balance Sheet*

1. To better align the presentation of the FR Y–9C Balance Sheet with that of the Call Report Balance Sheet, components of item 7, ''Other real estate owned,'' and item 10, ''Intangible assets,'' and line items 16, ''Commercial paper,'' and 17, ''Other borrowed money with a remaining maturity of more than one year'' would be moved to the Memoranda schedule.

2. Item 20, ''Mandatory convertible securities,'' with a two-way breakout between item 10.a, ''Equity contract notes, gross'' and item 10.b, ''Equity commitment notes, gross'' would be eliminated. Information on mandatory convertible securities would be included in item 21, ''Subordinated notes and debentures.

In addition, items on Schedule HC would be renumbered and certain line item captions modified to better align with information reported on the Call Report Balance Sheet.

*Schedule HC–A—Securities*

1. Memoranda item 7, ''U.S. government agency and corporation obligations (exclude mortgage-backed securities)'' would be moved to Schedule HC–A, as item 2. Currently a two-way breakout of this item is collected for such securities ''Issued by U.S. government agencies'' (Memoranda item 7.a) and for securities ''Issued by

U.S. government-sponsored agencies'' (Memoranda item 7.b) from BHCs with total consolidated assets of $1 billion or more. These two items would replace the total reported for U.S. government agency and corporate obligations currently reported in item 2 and would be reported by all BHCs. This change would provide for consistency in reporting with the Call Report Schedule RC–B, Securities.

2. Memoranda item 8, ''Mortgage-backed securities (MBS),'' with the breakout between ''Pass-through securities'' (item 8.a) and ''Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS)'' (item 8.b) would be moved to Schedule HC–A, new item 4. These items would then be reported by all BHCs, rather than by BHCs with total consolidated assets of $1 billion or more. FR Y–9C data show that BHCs of $1 billion or more in total assets have long been actively involved in mortgage-backed securities. For 1999, mortgage-backed securities represented 45 percent of the total securities portfolio for BHCs of $1 billion or more in total assets. Call Report data show that, for commercial banks between $150 million and $1 billion in total assets, mortgage-backed securities represented nearly 30 percent of their total securities portfolio in 1999. Given the suspected significance of BHC involvement in this activity at all levels, the Federal Reserve proposes to collect mortgage-backed security information from all FR Y–9C respondents. All commercial banks currently file this information on the Call Report.

3. Collect a new item 7, ''Investments in mutual funds and other equity securities with readily determinable fair values' from all FR Y–9C respondents in order to assure the completeness and continuity of the reporting of BHC security holdings given the proposed changes to Memoranda items 7 and 8. Currently this information (Memoranda item 9.a) is collected only from BHCs with total consolidated assets of $1 billion or more. All commercial banks currently file this information on the Call Report.

4. Item 3.a, ''Taxable securities'' and item 3.b, ''Tax exempt securities,'' would be combined. The caption would read ''Securities issued by states and political subdivisions in the U.S.''

5. Items reported for U.S. securities (item 4) and Foreign securities (item 5) would be modified to collect only U.S. debt securities and Foreign debt securities for consistency with the Call Report.

*Schedule HC–B—Loans and Lease Financing Receivables*

1. The three-way breakout for item 8, ''All other loans,'' would be collapsed to a single item, eliminating items 8.a, ''Taxable obligations (other than securities) of states and political subdivisions in the U.S.'' and 8.b, ''Tax exempt obligations (other than securities) of states and political subdivisions in the U.S.'' This change would provide for consistency in reporting with the Call Report Loan schedule.

In addition, items from Schedule HC–B would be renumbered to align with the presentation order on the Call Report Loan schedule.

*Schedule HC–F—Derivatives and Off-Balance-Sheet Items*

1. Item 2, ''Financial standby letters of credit,'' and item 2.a, ''Amount of financial standby letters of credit conveyed to others'' would be added to provide for consistency in reporting this off-balance-sheet information with similar items collected on the Call Report, and to tie information reported in Schedule HC–F with off-balance-sheet information proposed in Schedule HC–R, item 44, ''Financial standby letters of credit.''

2. Item 3, ''Performance standby letters of credit,'' and item 3.a, ''Amount of performance standby letters of credit conveyed to others'' would be added to provide for consistency in reporting this off-balance-sheet information with similar items collected on the Call Report, and to tie information reported in Schedule HC–F with off-balance-sheet information proposed in Schedule HC–R, item 45, ''Performance standby letters of credit.''

3. Item 9, ''Other significant off-balance-sheet items (exclude off-balance-sheet derivatives) that exceed 10% of total equity capital'' would be retitled as ''All other off-balance-sheet items (exclude derivatives)'' to capture all other off-balance-sheet exposures to provide for consistency in reporting this off-balance-sheet information with the similar item collected on the Call Report and would provide analysts a complete measure of the risk associated with these exposures.

*Schedule HC–G—Memoranda*

1. The two-way breakdown of deferred tax assets captured in item 1.a.(1), ''IRS loan loss provision,'' and item 1.a.(2), ''Other,'' would be eliminated in favor of a single item for ''Net deferred tax assets'' and the item would be included on a new ''Other Assets'' schedule discussed below. Similarly, the two-way breakdown of deferred tax liabilities captured in items 1.b.(1), ''IRS loan loss provision,'' and item 1.b.(2), ''Other,'' would be eliminated in favor of a single item for ''Net deferred tax liabilities'' and would be included on a new ''Other Liabilities'' schedule discussed below.

2. Item 3, ''Number of full-time equivalent employees'' would be moved to Schedule HI, Income Statement, memoranda item 5, to be consistent with presentation in the Call Report.

3. Item 7.a, ''Amount of cash items in process of collection netted against deposit liabilities in reporting Schedule HC,'' item 8, ''Reciprocal demand balances with depository institutions (other than commercial banks in the U.S.),'' and item 16, ''Please describe and list below separately the dollar amount outstanding of assets removed from the reporting company's balance sheet (Schedule HC) in connection with assets netted against liabilities when there exists a legal right of offset'' would be eliminated.

*Schedule HC–I—Risked Based Capital*

1. Schedule HC–I, Part I, Memoranda item 6, ''Fair value of mortgage servicing assets,'' would be retitled as ''Estimated fair value of mortgage servicing assets'' and moved to Schedule HC–M, Memoranda item 18.a(1).

*Schedule HC–IC—Additional Detail on Capital Components*

Items on Schedule HC–IC would be included in the Memoranda section of the revised risk-based capital schedule. In addition, the Federal Reserve proposes the following changes.

1. Item 1.a.(4), ''Other items included in 'Minority interest in consolidated subsidiaries and similar items,' on Schedule HC subject to limits in Tier 1 capital,'' would be added to provide for a more complete disclosure of elements incorporated into the calculation of Tier 1 capital.

2. Item 1.b., ''Auction rate preferred stock and any other perpetual preferred stock deemed by the Federal Reserve to be eligible for Tier 2 capital only,'' item 2., ''Total perpetual debt, undedicated portions of mandatory convertible securities and long-term preferred stock with an original maturity of 20 years or more that qualify for supplementary capital (after discounting),'' and item 3, ''Intermediate preferred stock with an original weighted-average maturity of 5 years or more; subordinated debt with an original weighted average maturity of 5 years or more; or unsecured long-term debt issued by BHC prior to March 12, 1988, that qualified as secondary capital

(after discounting)'' would be eliminated.

*Schedule HC–H—Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets*

1. Item 1, ''Loans secured by real estate'' as a total would be deleted. This item can be derived from the sum of the components of revised item 1.

*New Schedules for ''Other Assets'' and ''Other Liabilities''*

As mentioned previously, the Federal Reserve proposes to add two new schedules for the reporting of ''Other Assets'' and ''Other Liabilities.'' Items reported on these schedules consist of items currently reported on the Memoranda and Securities schedules, and certain new and revised items. The addition of these schedules will provide greater consistency with the presentation provided in the Call Report. The ''Other Assets'' schedule would consist of the following items: (1) Accrued interest receivables, (2) Net deferred tax assets, (3) Interest-only strips receivable (not in the form of a security) on Mortgage loans and Other financial assets, (4) Equity securities that do not have readily determinable fair values, and (5) Other. The ''Other Liabilities'' schedule would consist of the following items: (1) Net deferred tax liabilities, (2) Allowance for credit losses on off-balance-sheet credit exposures, and (3) Other.

Item 2 on the ''Other Liabilities'' schedule, ''Allowance for credit losses on off-balance-sheet credit exposures,'' is included on the balance sheet as a component of other liabilities sheet separate from the allowance for loan and lease losses. At present, the limited number of BHCs that have an allowance for credit losses on off-balance-sheet credit exposures combine this allowance with their allowance for loan and lease losses when completing Schedule HI–B, Part II, (Changes in) Allowance for Credit Losses. Because the allowance for loan and lease losses is reported on the balance sheet (Schedule HC), the amount of the allowance for credit losses on off-balance-sheet exposures can be derived. However, as discussed previously, the Federal Reserve is proposing to revise the scope of Schedule HI–B, Part II. This change creates the need for the proposed new item to identify the amount, if any, of a BHC's allowance for credit losses on off-balance-sheet exposures.

*Schedule HI—Consolidated Income Statement*

2. Item 5.b.(1) ''Service charges on deposit accounts'' and item 5.b.(2) ''Other service charges, commissions, and fees'' would be combined and retitled ''Service charges on deposit accounts in domestic offices.'' In addition, Memorandum item 5 would be deleted since this item was for the purpose of describing items included in 5.b.(2) that exceeded a particular threshold.

3. Memorandum item 4 ''Income taxes applicable to gains (losses) on securities not held in trading accounts'' would be deleted.

*Schedule HI–B, Part II—Allowance for Credit Losses*

1. Item 6, ''Foreign currency translation adjustments,'' would be combined with new item 5, ''Adjustments.''

*Revisions Related to the Gramm-Leach-Bliley Act of 1999*

The Federal Reserve proposes to collect certain information to address the difference in the supervisory requirements for BHCs and newly formed financial holding companies (FHCs) that conduct insurance-related activities. While bank holding companies have engaged in a relatively limited amount of insurance-related activities for some time, the volume and complexity of insurance related activities engaged in by FHCs will likely increase as they take advantage of the provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA).

Insurance related activities of BHCs have been limited to the provisions provided under Regulation Y and the Garn-St. Germain Depository Institutions Act of 1982. Now FHCs, among other things, can engage in and affiliate with full service insurance companies providing insurance agency (sales) and underwriting activities. In addition, while traditional BHCs have been able to engage in various nonbank activities and new businesses, they were required to apply in advance to acquire or launch material new business lines. Today, BHCs that qualify as FHCs are able to rapidly enter insurance activities without advance notification to the Federal Reserve.

The existing FR Y9–C is structured to accommodate bank, securities and other activities incidental to banking, but not for insurance activities. With the latest Call Report proposal, adjustments are being proposed to reflect both new authority and financial innovation for bank-level activities and many of these same changes are also being proposed for the FR Y9–C. However, those Call Report adjustments do not include insurance underwriting, since that activity remains impermissible for banks. Because insurance underwriting affiliates are unique to FHCs, the FR Y9–C will need to reflect this special affiliation in a way that is useful to supervisors and the public without creating undue burden.

As an umbrella supervisor, it is essential for the Federal Reserve to evaluate the volume and nature of insurance activities conducted by an FHC on a fully consolidated basis. A few basic indicators of the nature and volume of the FHC's insurance business that cut across legal entities and business lines will be critical, especially since the number of entities and related functional regulators involved with such activities can be substantial and impractical for the Federal Reserve to aggregate on its own. Moreover, with hundreds of BHCs now qualified as FHCs, monitoring those that have begun to engage in insurance activities, and how rapidly they are growing that business, will be extremely challenging. Regulatory disclosures will be particularly important for smaller FHCs that do not regularly publish statements to the marketplace. By adopting some modest reporting supplements to the FR Y9–C, the Federal Reserve will be better prepared to tailor and calibrate its supervisory and coordination efforts with functional supervisors on an as needed and risk-focused basis.

Simply stated, these data would serve to identify whether the organization has engaged in agency business (sales), underwriting and reinsurance activities and indicate the approximate size of its reserve positions (which constitute the largest liability for an insurance company and the most prominent source of insurer insolvency). These ''identifiers'' will serve as a tool for identifying when the Federal Reserve will need to contact and coordinate with functional regulators to get additional information without duplicative or onerous burden on the FHC's functionally-regulated entities.

The Federal Reserve proposes to add a new schedule HC–I, ''Insurance-Related Activities,'' to obtain the following ''identifier'' information: Part I, Property and Casualty; Part II, Life and Health; and Part III, All Insurance-Related Activities. Items proposed for Part I are: Agent balances; Reinsurance recoverables; Deferred acquisition costs and value of insurance acquired; Policy benefits, reserves, and loss adjusted expenses; and Unearned premiums. Items proposed for Part II are: Separate

account assets; Asset valuation reserve and interest maximization reserve; Policy benefits, reserves, and loss adjusted expenses; Liabilities for premiums and other deposit funds; and Separate account liabilities. Items proposed for Part III are: Total assets and Net Income.

The Federal Reserve also proposes to add two ''identifier'' items to Schedule HI, Consolidated Income Statement. Under item 5, ''Noninterest income,'' item 5.i, ''Premiums earned'' would be added. Under item 7, ''Noninterest expense,'' item 7.d, ''Benefits, losses and expenses from insurance related activities'' would be added.

Instructions

Instructional revisions and clarifications will be done in accordance with changes made to the Call Report instructions and revisions to the Capital Guidelines.

2. *Report title:* Parent Company Only Financial Statements for Large Bank Holding Companies

*Agency form number:* FR Y–9LP.

*OMB control number:* 7100–0128.

*Frequency:* Quarterly.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 37,985.

*Estimated average hours per response:* 4.49.

*Number of respondents:* 2,115.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

*Abstract:* The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

*Current actions:* The Federal Reserve proposes the following revisions to the FR Y–9LP effective with the March 31, 2001, reporting date.

*Schedule PC—Parent Company Only Balance Sheet*

1. Item 4.f, ''Allocated transfer risk reserve,'' would be deleted from the balance sheet. BHCs would report item 4.c, ''Loans, net of unearned income'' and item 4.c, ''Leases, net of unearned income'' net of any allocated transfer risk reserve.

2. Item 15, ''Mandatory convertible securities,'' with a two-way breakout between item 15.a, ''Equity contract notes, gross'' and item 15.b, ''Equity commitment notes, gross'' would be eliminated. Information on mandatory convertible securities would be included in item 16, ''Subordinated notes and debentures.''

3. Items 20.e, ''Net unrealized holding gains (losses) on available-for-sale securities,'' and 20.f, ''Accumulated net gains (losses) on cash flow hedges'' would be combined and reported as ''Accumulated other comprehensive income.'' This change would conform the presentation of the equity capital section of the FR Y–9LP balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

4. A new item for ''Other equity capital components'' would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock (item 20.g) would no longer be reported separately. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

*Schedule PI—Parent Company Only Income Statement*

1. Item 2.c.(1), ''Provision for credit losses,'' would be revised so that it includes only the provision for loan and lease losses. BHCs would report any provision for credit losses on off-balance-sheet exposures in item 2.d, ''All other expenses.''

2. Item 2.c.(2), ''Provision for allocated transfer risk,'' would be eliminated as a specific income statement item. BHCs would report any provision for allocated transfer risk in item 2.d, ''All other expenses.''

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

3. *Report title:* Parent Company Only Financial Statements for Large Bank Holding Companies.

*Agency form number:* FR Y–9SP.

*OMB control number:* 7100–0128.

*Frequency:* Semiannual.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 29,001.

*Estimated average hours per response:* 3.82.

*Number of respondents:* 3,796.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

*Abstract:* The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one-bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

*Current actions:* The Federal Reserve proposes the following revisions to the FR Y–9SP effective with the June 30, 2001, reporting date.

*Balance Sheet*

1. Items 16.d, ''Net unrealized holding gains (losses) on available-for-sale securities,'' and 16.e, ''Accumulated net gains (losses) on cash flow hedges'' would be combined and reported as ''Accumulated other comprehensive income.'' This change would conform the presentation of the equity capital section of the FR Y–9SP balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

2. A new item for ''Other equity capital components'' would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares, which, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock will continue to be reported separately as Memoranda item 3 (if the amount exceeds 5 percent of equity capital). This change would make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed bank Call Report and the Thrift Financial Report.

3. Memoranda item 4, ''Mandatory convertible securities, net,'' would be eliminated.

In addition the following change would be made independent of changes proposed to the FR Y–9C. Instructions for Memoranda item 1, ''Total consolidated assets of the bank holding company,'' indicate that this item is to be completed only by multibank holding companies with total consolidated assets of less than $150

million, without any debt outstanding to the general public and not engaged in a nonbank activity (either directly or indirectly) involving financial leverage and not engaged in credit extending activities. Board staff proposes to remove this reporting threshold and require all BHCs that file the FR Y–9SP to complete this item so that staff can monitor the size of these institutions.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

**Proposal To Approve Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Reports**

1. *Report title:* Quarterly Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

*Agency form number:* FR Y–11Q.

*OMB control number:* 7100–0244.

*Frequency:* Quarterly.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 14,402.

*Estimated average hours per response:* 6.35.

*Number of respondents:* 567.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to most of the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently FR Y–11Q, memorandum item 7.a, loans and leases past due 30 through 89 days and FR Y–11Q, memorandum item 7.d, loans and leases restructured and included in past due and nonaccrual loans are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

*Abstract:* The FR Y–11Q is filed quarterly by the top tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top-tier bank holding company' consolidated Tier 1 capital, or where the nonbank subsidiary' total operating revenue equals 5 percent or more of the top-tier bank holding company' consolidated total operating revenue. The report consists of a balance sheet, income statement, off-balance-sheet items, information on changes in equity capital, and a memoranda section.

*Current actions:* The Federal Reserve proposes the following revisions to the FR Y–11Q effective with the March 31, 2001, reporting date.

*Balance Sheet*

1. Items 20.e, ''Net unrealized holding gains (losses) on available-for-sale securities,'' and 20.f, ''Accumulated net gains (losses) on cash flow hedges'' would be combined and reported as ''Accumulated other comprehensive income.'' This change would conform the presentation of the equity capital section of the FR Y–9C balance sheet to FASB Statement No. 130, Reporting Comprehensive Income.

2. A new item for ''Other equity capital components'' would be added to the equity capital section of the balance sheet. This item would include treasury stock and unearned Employee Stock Ownership Plan shares that, under GAAP, are to be reported in a contra-equity account on the balance sheet. Treasury stock (item 20.h) would no longer be reported separately. This change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the proposed FR Y–9C.

*Memoranda*

1. Consistent with changes proposed to the FR Y–9C, Memoranda item 7.a, ''Loans and leases past due 30 through 89 days,'' and Memoranda item 7.d, Loans and leases restructured and included in past due and nonaccrual loans,'' would no longer be afforded confidential treatment.

2. The scope of item 12.a, ''Income earned, not collected on loans,'' would be expanded to cover all ''Accrued interest receivable.'' Broadening this category to include interest earned, not collected on earning assets other than loans would be more consistent with the typical presentation of accrued interest receivable in financial statements prepared for other financial reporting purposes.

*Income Statement*

*Noninterest income:* Noninterest income has grown substantially over the last few years as a source of revenue for BHCs. A more detailed breakdown of noninterest income would provide the Federal Reserve with valuable supervisory information on the amount and type of fee-generating activities within the BHC.

Therefore, the Federal Reserve proposes to add several new noninterest income categories to those currently collected in the FR Y–11Q income statement. These categories were selected in part based on a review of noninterest income information currently reported by BHCs in Schedule HI, Memoranda items 5 and 6, of the FR Y–9C. In these items, BHCs must itemize and describe, using their own terminology, their most significant categories of ''Service charges, commissions, and fees'' and ''Other noninterest income.''

The categories of noninterest income that would be added as specific items on the FR Y–11Q income statement are: (1) Investment banking, advisory, brokerage, and underwriting fees and commissions, (2) venture capital revenue, (3) net servicing fees, (4) net securitization income, and (5) insurance commissions and fees. The current income statement items for ''Income from underwriting activities,'' ''Income from brokerage activities,'' ''Income from loan servicing,'' and ''Other service charges, commissions, and fees'' (items 5.b.(2),(3),(4) and (6)) would be discontinued.

The new noninterest income items would provide greater comparability among the categories of noninterest income currently reported by BHCs. Some of the proposed noninterest income categories would represent the only information provided in the FR Y–11Q on certain activities. By collecting more detailed noninterest income data, the significance of each of these activities can be compared to other income-generating activities of the nonbank subsidiary and of the BHC.

*Changes in Equity Capital*

1. The manner in which the previous year-end balance of equity capital is reported in this schedule would be changed so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, nonbank subsidiaries must report the ''Equity capital end of previous calendar year'' in the FR Y–11Q in item 1. If the nonbank subsidiary has filed any amendments to this previous year-end FR Y–11Q report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 6, and the amended equity capital balance for the previous year-end is reported in item 7. Item 1 would be revised to have nonbank subsidiaries report ''Equity capital most recently reported for the end of the previous calendar year.''

2. Item 18, ''Foreign currency translation adjustments'' would be replaced by an item for ''Other comprehensive income.'' This new item would include any change in net unrealized holding gains (losses) on available-for-sale securities and any change in accumulated net gains (losses) on cash flow hedges (currently included

in item 6, ''Other adjustments''). Identifying ''Other comprehensive income'' in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

2. *Report title:* Annual Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

*Agency form number:* FR Y–11I.

*OMB control number:* 7100–0244.

*Frequency:* Annual.

*Reporters:* Bank holding companies.

*Annual reporting hours:* 8,531.

*Estimated average hours per response:* 3.24.

*Number of respondents:* 2,633.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form. Currently FR Y–11I, Schedule A, item 7.a, loans and leases past due 30 through 89 days and FR Y–11I, Schedule A, item 7.d, loans and leases restructured and included in past due and nonaccrual loans are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

*Abstract:* The FR Y–11I is filed annually by the top tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y–11Q. The FR Y–11I report consists of similar balance sheet, income statement, off-balance-sheet, and change in equity capital information that is included on the FR Y–11Q. However, some of the items on the FR Y–11I are collected in a less detailed manner. In addition, the FR Y–11I also includes a loan schedule to be submitted only by respondents engaged in extending credit.

*Current actions:* The Federal Reserve proposes the following revisions to the FR Y–11I effective with the December 31, 2001, reporting date.

*Changes in Equity Capital*

1. The manner in which the previous year-end balance of equity capital is reported in this schedule would be changed so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, nonbank subsidiaries must report the ''Equity capital end of previous calendar year'' in the FR Y–11I in item 1. If the nonbank subsidiary has filed any amendments to this previous year-end FR Y–11I report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 6, and the amended equity capital balance for the previous year-end is reported in item 7. Item 1 would be revised to have nonbank subsidiaries report ''Equity capital most recently reported for the end of the previous calendar year.''

2. Item 5, ''Foreign currency translation adjustments'' would be replaced by an item for ''Other comprehensive income.'' This new item would include any change in net unrealized holding gains (losses) on available-for-sale securities and any change in accumulated net gains (losses) on cash flow hedges (currently included in item 6, ''Other adjustments''). Identifying ''Other comprehensive income'' in the changes in equity capital schedule is consistent with FASB Statement No. 130, Reporting Comprehensive Income.

*Schedule A—Loans and Lease Financing Receivables*

1. Consistent with changes proposed to the FR Y–9C, item 7.a, ''Loans and leases past due 30 through 89 days,'' and item 7.d, Loans and leases restructured and included in past due and nonaccrual loans,'' would no longer be afforded confidential treatment.

Instructions

Instructional revisions and clarifications would be made as necessary, to conform with changes made to the Call Report instructions.

Board of Governors of the Federal Reserve System, November 13, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–29426 Filed 11–16–00; 8:45 am]

**BILLING CODE 6210–01–F**

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:1.

1. Nancy Barr Dixon, Eufaula, Alabama; Michael Charles Dixon, Sr., Eufaula, Alabama; Hope Cotton Dixon, Eufaula, Alabama; Michael Charles Dixon, Jr., Eufaula, Alabama; Claudia Dixon Balkcom, Atlanta, Georgia; Heather Barr Dixon, Eufaula, Alabama; Marian Christine Dixon, Birmingham, Alabama; Rebecca Janie Mac Dixon, Auburn, Alabama; Robert Mack Dixon, Eufaula, Alabama; Mary Elliott Dixon, Eufaula, Alabama; Mary Clayton Dixon, Eufaula, Alabama; Eric Ross Fenichel, Atlanta, Georgia; Janie Dixon King, Eufaula, Alabama; William Daniel King, Eufaula, Alabama; Robert Mack Dixon, Jr., Eufaula, Alabama; Preston Copeland Dixon, Birmingham, Alabama; James Franklin Dixon, III, Birmingham, Alabama; Rita Hallett Dixon, Birmingham, Alabama; Thomas Seay Lawson, Jr., Montgomery, Alabama; Sarah Clayton Lawson, Montgomery, Alabama; and Preston Copeland Clayton, Jr., Eufaula, Alabama; all to retain voting shares of Eufaula BancCorp, Inc., Eufaula, Alabama, and thereby indirectly retain voting shares of Southern Bank of Commerce, Eufaula, Alabama.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. William Edwin Shoemaker, Cambridge, Nebraska; to acquire voting shares of FNB Financial Services, Inc., Cambridge, Nebraska, and thereby indirectly acquire voting shares of The First National Bank of Cambridge, Cambridge, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. David B. and Mary T. Weyrich, Paso Robles, California; to acquire additional voting shares of Heritage Oaks Bancorp, Paso Robles, California, and thereby indirectly acquire additional voting shares of Heritage Oaks Bank, Paso Robles, California.

Board of Governors of the Federal Reserve System, November 14, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–29525 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Israel Salt Industries, Ltd., Atlit, Israel, through its direct and indirect control of 45.25 percent of the voting shares of Bank Hapoalim B.M., Tel Aviv, Israel; to become a bank holding company as a result of the establishment by Bank Hapoalim of Signature Bank, New York, New York (in formation). Signature Bank would be a wholly owned subsidiary of Bank Hapoalim.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. F&M National Corporation, Winchester, Virginia; to merge with Community Bankshares of Maryland, Inc., Bowie, Maryland, and thereby indirectly acquire Community Bank of Maryland, Bowie, Maryland.

2. Virginia Capital Bancshares, Inc., Fredericksburg, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Fredericksburg State Bank, Fredericksburg, Virginia.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northstar Financial Group, Inc, Bad Axe, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Northstar Bank (in organization), Bad Axe, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Mississippi Valley Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Southwest Bank of Phoenix (in organization), Phoenix, Arizona. Comments regarding this application must be received not later than December 11, 2000.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to become a bank holding company by acquiring 21.09 percent of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of First National Bank of Omaha, Omaha, Nebraska; First National Bank & Trust Company of Columbus, Columbus, Nebraska; First National Bank, North Platte, Nebraska; First National Bank, South Dakota, Yankton, South Dakota; Platte Valley State Bank & Trust Company, Fremont, Nebraska; Fremont National Bank & Trust Company, Fremont, Nebraska; First National Bank of Kansas, Overland Park, Kansas; and First National of Colorado, Inc., Fort Collins, Colorado; and thereby acquire First National Bank, Fort Collins, Colorado; Bank in Boulder, Boulder, Colorado; and Union Colony Bank, Greeley, Colorado.

Board of Governors of the Federal Reserve System, November 14, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–29526 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de nova,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.27) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Mizuho Holdings, Inc., Tokyo, Japan, and Dai-Ichi Kangyo Bank, Limited, The, Tokyo Japan; to engage *de nova* through its subsidiary, Dealerconx, Inc., Livingston, New Jersey, in providing loan and lease agency and brokerage services, data processing services and loan/lease servicing through an internet-based data processing application available to retail automotive dealers that seek loan and lease financing and related financial services for customers' retail automobile purchases, pursuant to § 225.28(b)(1), (2), (3), and (14) of Regulation Y.

2. Svenska Handelsbanken, Stockholm, Sweden; to engage *de novo*, through its subsidiary, Oktogon Advisers, LLC, New York, New York, in providing portfolio investment advice on a discretionary and directed basis (including advice on derivative transactions and structured assets) to U.S. and non-U.S. clients, including corporations and institutional investors (such as pension funds and insurance companies), charitable foundations, religious and university endowment funds, private investment companies, and hedge funds (both off-shore and on-shore) and mutual funds, pursuant to § 225.28(b)(6) of Regulation Y.

3. Westdeutsche Landesbank Girozentrale, Dusseldorf, Germany; to acquire Gulfstream Global Investors, Ltd., Addison, Texas, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Baord.*

[FR Doc. 00–29527 Filed 11–16–00; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

**[Docket No. R–1086]**

## Federal Reserve Bank Services

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board has approved the fee schedules for Federal Reserve priced services and electronic connections and a private-sector adjustment factor (PSAF) for 2001 of $206.9 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

**DATES:** The new fee schedules become effective January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the fee schedules: Erik Kiefel, Financial Services Analyst, Retail Payments, (202/721–4559); Susan Foley, Senior Financial Services Analyst, ACH Payments, (202/452–3596); Cynthia Yablon, Financial Services Analyst, Funds Transfer and Book-Entry Securities Services, (202/452–2046); Donna DeCorleto, Financial Services Project Leader, Noncash Collection Service, (202/452–3956); Michael Lambert, Senior Financial Services Analyst, Special Cash Services, (202/452–3376); or Paul Grabow, Senior Information Technology Analyst (electronic connections), (202/452–2830), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Gregory Evans, Manager, Financial Accounting, (202/452–3945), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only,* please contact Janice Simms (202/872–4984). Copies of the 2001 fee schedules for the check service are available from the Board, the Reserve Banks, or the Federal Reserve Banks' financial services web site at *www.frbservices.org*.

**SUPPLEMENTARY INFORMATION:**

### I. Priced Services

*A. Overview*

The Federal Reserve Banks continue to meet the Monetary Control Act's requirement that they recover, over the long run, their direct and indirect costs, including imputed costs and profits, of providing priced services. Over the period 1990 through 1999, the Reserve Banks recovered 99.7 percent of their total costs for providing priced services, including imputed expenses, special project costs that were budgeted for recovery, and targeted after-tax profits, or return on equity (ROE).[1]

For 2000, the Reserve Banks estimate that they will recover 100.4 percent of the costs of providing priced services. They project a 98.0 percent recovery rate in 2001, largely due to transition costs associated with the check modernization project and the transition to a new cost-allocation method for the book-entry service. The primary risks to the 2001 projection are the Reserve Banks' ability to meet aggressive revenue and cost targets in the check service, because of the impact of the check modernization project; the uncertain effects of price-structure and service-level changes being implemented for automated clearinghouse (ACH) interoperator transactions; and increased competition for ACH and funds-transfer services.

In their 2001 fee schedules, the Reserve Banks include changes that continue to provide an economic incentive for depository institution customers to make greater use of electronic payment services. In particular, the price index for electronic payment services (ACH, funds transfer and net settlement, book-entry securities, and electronic check) and electronic connections is projected to decline approximately 1.9 percent in 2001. The index for paper-based payment services (check, special cash, and noncash collection) is expected to increase 6.4 percent. The overall 2001 price index for all Federal Reserve priced services is projected to increase 4.2 percent, the same as the increase in 2000. Since 1996, the overall price index has increased only half a percent.[2]

The following are changes in fee structures and levels for priced services in 2001:

- The Reserve Banks will make no changes to fees for the Fedwire funds transfer and national net settlement services. The price index for Fedwire

[1] These imputed costs, such as taxes that would have been paid and the return on capital that would have been earned had the services been provided by a private business, are referred to as the PSAF. The PSAF is based on data developed in part from a model comprising the nation's fifty largest (by asset size) bank holding companies. Based on consolidated financial data for the holding companies in the model for each of the last five years, the targeted ROE is the budgeted after-tax profit that the Federal Reserve would have earned had it been a private business. This ten-year recovery rate is based upon the method used for the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report.* The pro forma income statement reflects certain offsets to costs related to the transition to financial accounting standards number 87 (FAS 87) that have not been included in the 1999 repricing pro forma in this memorandum. Beginning in 2000, the PSAF includes additional financing costs associated with pension assets used by priced services. This ten-year cost-recovery amount has been computed as if these costs historically had been included in the PSAF calculations. If this modification were not applied to prior periods, the ten-year recovery rate would increase to 101.1 percent. In order to provide a more accurate comparison against the targeted return on equity that was used for establishing prices within those services, the 1999 service-line recovery data in this memorandum do not reflect the revisions to the PSAF method.

[2] These estimates are based on a chained Fisher Ideal price index. This index provides customers with a representation of the total price or cost of Reserve Bank services, offering a more complete picture than is possible solely from comparing changes in individual service fees over time. This index is not adjusted for quality changes in Federal Reserve priced services. Data elements used in calculating the index include explicit fee revenue from priced services products and services and electronic connections to the Reserve Banks, volumes associated with those products and services, and imputed income associated with clearing balances through the Reserve Banks. The price index is calculating using the actual, estimated, or projected full-year revenues and volumes. For 2001, the year-over-year percentage change in the index results from a comparison of the 2001 projections to the 2000 estimates for priced services revenues and volumes. The Reserve Banks delayed implementing the fee changes for 2000 until April to minimize changes for depository institution customers during the period surrounding the century rollover. The 2001 index, therefore, does not directly compare the impact of the prices implemented on April 2000 against the 2001 prices because the 2000 estimate includes revenues and volumes from the first quarter of 2000. The changes in the price index since 1996 are calculated with full-year 2001 projected and 1996 actual revenues and volumes.

funds transfers has declined more than 46 percent since 1996.

• The Reserve Banks will increase the surcharge for an off-line Fedwire book-entry securities transfer 39 percent in 2001 to $25. The fee change is expected to cost customers approximately $197,000 next year. Other book-entry fees will remain at 2000 levels. Including the fee change for 2001, the price index for the book-entry securities service has declined more than 9 percent since 1996.

• The Reserve Banks will retain current prices for customers of the FedACH service. The Reserve Banks are initiating discussions with private-sector operators (PSOs) to negotiate deposit deadlines and fees for transactions that they exchange with each other. The new deadlines will be in place no later than June 2001, and the price structure modifications will be implemented no later than September 2001. Since 1996, the price index for the ACH service has decreased almost 49 percent.

• The Reserve Banks will increase transaction fees for all check products 2.6 percent compared with current prices or 3.9 percent compared with April 2000 fees. Transaction fees for paper check products are projected to increase 2.6 percent over current prices or 3.9 percent compared to April 2000 fees. Paper check products include forward-processed, fine-sort, and returned checks. Reserve Banks are standardizing paper check products and implementing a more-consistent pricing structure across the Reserve Banks. Reserve Banks also will introduce new prices designed to encourage the accuracy of qualified returned checks and discourage the use of large-dollar checks. Transaction fees for payor bank services, which include electronic check products, will increase 2.9 percent from current prices or 3.7 percent from April 2000 fees. Electronic check products include electronic check presentment, image services, and electronic information. The price index for all check products, which includes imputed fees and other product and service fees not captured in the comparison of the individual transaction fees, is projected to increase 5.9 percent in 2001. The price index for paper check products is increasing 6.3 percent, while that for payor bank and check electronic connection services is decreasing 2.2 percent. Including the fee changes in 2001, the price index for the entire check service has increased almost 23 percent since 1996. Aggregate check service fee increases in 2001 are expected to cost depository institution customers approximately $50 million, assuming no changes to current customer processing choices.[3]

*B. Discussion*

Table 1 presents an overview of the budgeted 2000, estimated 2000, and projected 2001 cost-recovery performance for all priced services.

[3] The volume-weighted fee calculations for 2001 are based on a comparison of current and April 2000 transaction fees with the 2001 fees for check products, all weighted using the projected 2001 volumes. These volume-weighted calculations summarize changes in *specific* check product transaction fees while the chained Fisher Ideal price index includes the *all-in costs* to a customer of purchasing a market basket of Federal Reserve check products. The fees being introduced to encourage the accuracy of qualified returned checks and the greater use of electronic payment systems instead of large dollar checks are *not* included in the calculations of these transaction fee changes.

TABLE 1.—PRICED SERVICES COST RECOVERY

[Percent]

| Priced service | 2000 Budget | 2000 Estimate | 2001 Budget |
|---|---|---|---|
| All services | 99.0 | 100.4 | 98.0 |
| Check | 98.7 | 100.3 | 97.7 |
| ACH | 100.0 | 100.1 | 100.2 |
| Funds transfer | 100.4 | 100.0 | 100.1 |
| Book-entry | 101.3 | 102.4 | 94.9 |
| Noncash collection | 108.5 | 110.8 | 102.2 |
| Special cash | 101.6 | 103.4 | 100.6 |

The aggregate cost-recovery rate is heavily influenced by the check service, which accounts for approximately 83 percent of the total cost of priced services. The electronic services (ACH, Fedwire funds transfer, and Fedwire book-entry securities transfer) account for about 17 percent of costs. The noncash collection and special cash services represent a *de minimis* proportion of priced services expenses. Figure 1 shows the proportion of 2000 estimated priced services costs attributable to each service.

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**FIGURE 1**
**2000 ESTIMATED PRICED SERVICE COSTS BY SERVICE**

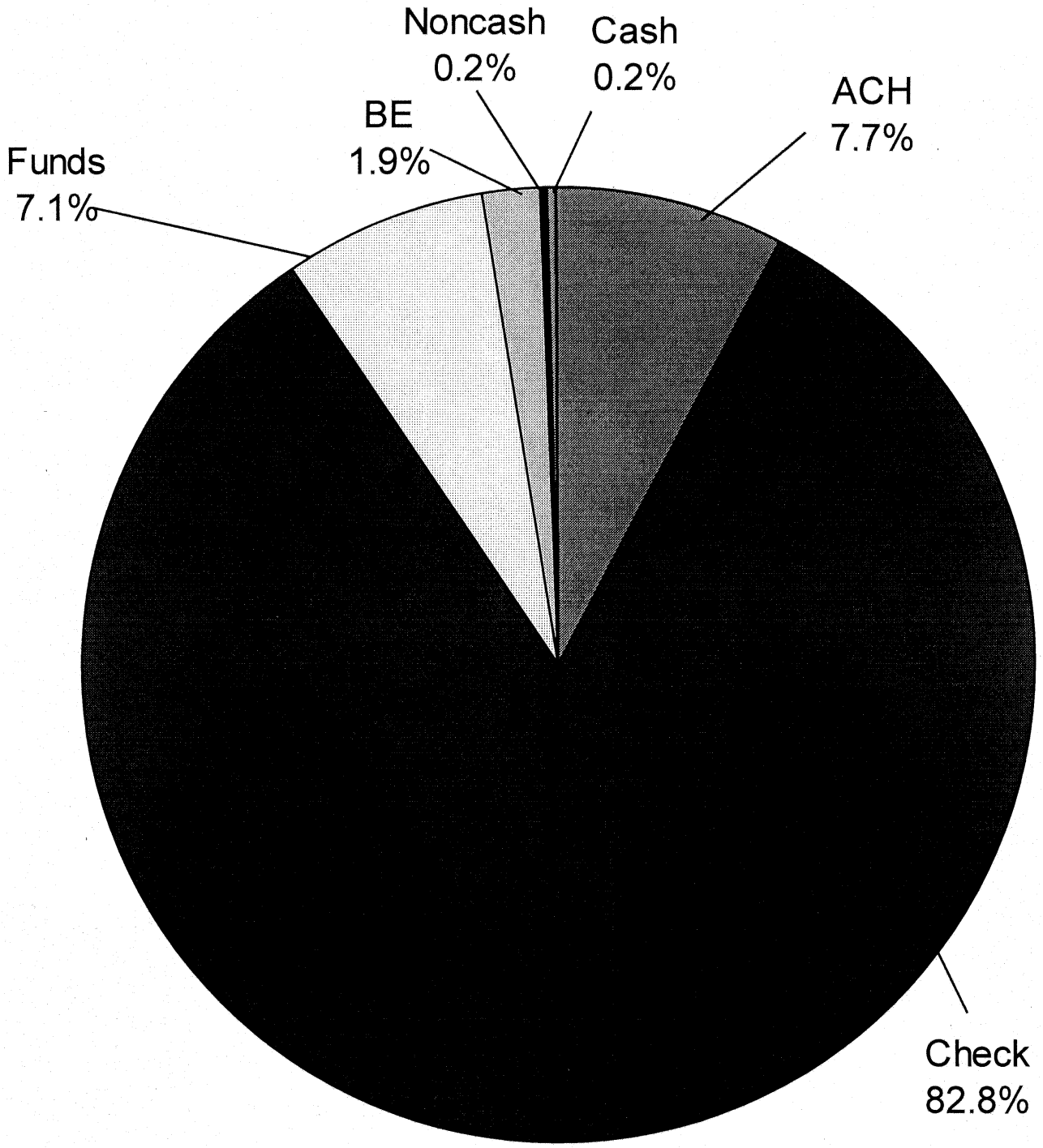

Table 2 summarizes the cost and revenue performance for priced services since 1999.

TABLE 2.—PRO FORMA COST AND REVENUE PERFORMANCE[a]

[In millions of dollars]

| Year | 1 Revenue[b] | 2 Total expense[c] | 3 Net income (ROE) [1 − 2] | 4 Target ROE[d] | 5 Recovery rate after target ROE[e] [1/(2+4)] (percent) |
|---|---|---|---|---|---|
| 1999 | 867.6 | 787.0 | 80.6 | 56.0 | 102.9 |
| 2000 (Estimate) | 920.5 | 818.7 | 101.7 | 98.4 | 100.4 |
| 2001 (Budget) | 978.5 | 889.4 | 89.1 | 109.3 | 98.0 |

[a] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Includes net income on clearing balances.

[c] The calculation of total expense on this and subsequent pro forma cost and revenue tables includes operating expenses and imputed costs plus special project costs recovered during the year. Imputed costs include interest on debt, taxes, FDIC insurance, Board of Governors expenses related to priced services, and the cost of float. Credits for prepaid pension costs under SFAS 87 are also included. In 1999, the book-entry service recovered $1.7 million in special project costs related to the completion of the automation consolidation project. In 2000, the check service estimates that it will recover fully $6.3 million in special project costs related to the ongoing check modernization initiative. In 2001, the check service projects that it will recover fully $15.1 million in special project costs related to check modernization.

[d] Target ROE is based on the ROE included in the PSAF and has been adjusted for taxes, which are included in column 2.

[e] If the PSAF method used to calculate the 2000 and 2001 aggregate priced service cost in this table were applied to the actual 1999 calculations, the recovery rate would decline to 100.4 percent.

1. 2001 Price Index

The price index for electronic payment services and electronic connections is projected to decline approximately 1.9 percent in 2001, and the index for paper-based payment services is expected to increase 6.4 percent. The overall 2001 price index for Federal Reserve services is projected to increase 4.2 percent, the same as the increase in 2000. The overall price index has increased half a percent since 1996. The higher overall price index in 2001 is attributable mainly to increased check prices. Figure 2 compares the Federal Reserve's price index for priced services with the gross domestic product price deflator, which shows that the cost of Federal Reserve priced services has historically increased more slowly than that of the deflator.

The decline in the price index for electronic payments services since 1996 has reflected, in large part, the ability of the Reserve Banks to capitalize on the operational efficiencies and scale economies inherent in providing payment services through centralized electronic payment processing applications. Between 1992 and 1998, the Reserve Banks' automated data processing facilities were consolidated into three sites, significantly reducing the cost of providing electronic payment services.

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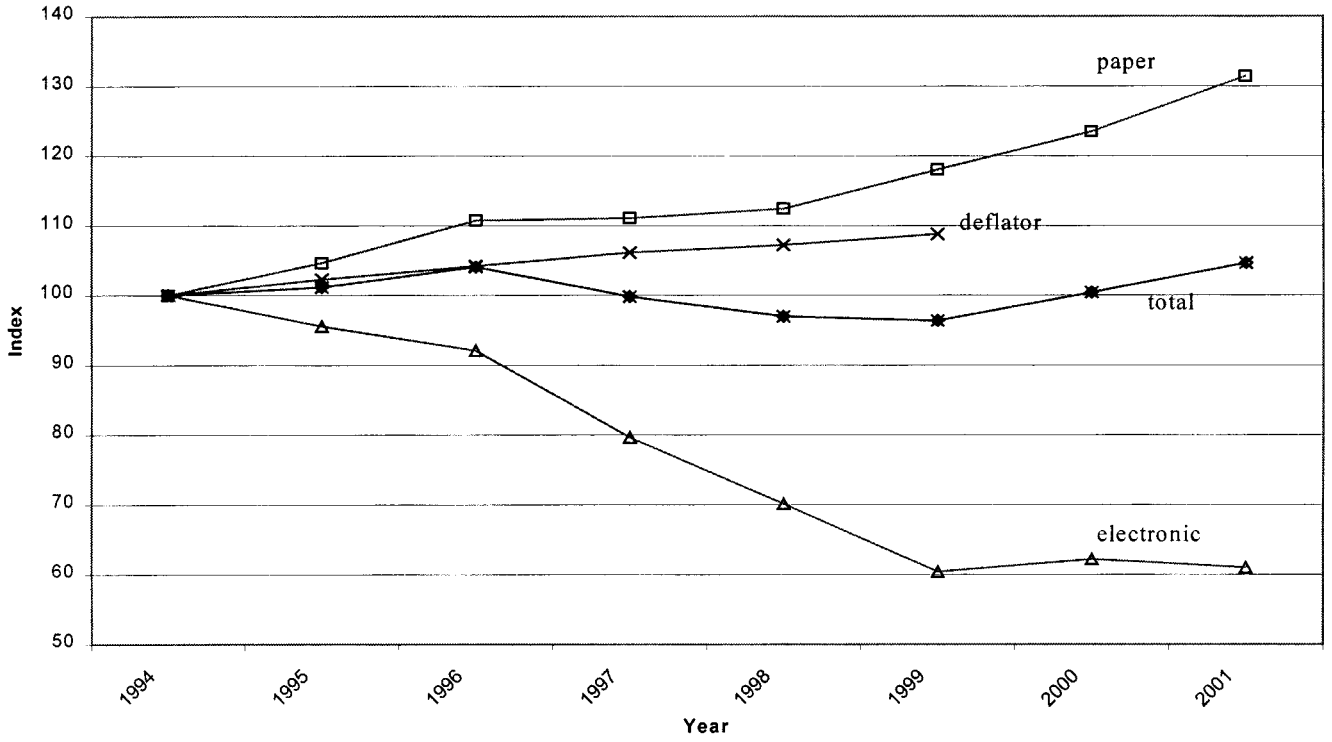
**FIGURE 2**
**FEDERAL RESERVE PAYMENT SERVICES PRICE INDEX**
Chained Fisher Ideal Index Compared With GDP Price Deflator

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2. Allocation of Corporate Overhead Costs to Priced Services

Corporate overhead costs are allocated to priced services in total and to other Reserve Bank activities based on their proportion of total Reserve Bank costs (expense-ratio basis). Because corporate overhead costs are not closely related to any particular priced service, the priced services portion of these costs are assigned among the individual services to facilitate the funding of significant multiyear strategic investments that would otherwise result in short-term price fluctuations, subject to established minimum and maximum amounts.[4] To a small extent in 1999, the Reserve Banks assigned these costs among priced services to accelerate the retirement of debt associated with the automation consolidation special project. In 2000, the assignment of corporate overhead costs to individual priced services supported the Reserve Banks' strategic check modernization project. In 2001, the overhead costs will be assigned along the traditional expense-ratio basis. Table 3 shows the assignment of corporate overhead costs for the years 1999–2001.

TABLE 3.—CORPORATE OVERHEAD ALLOCATIONS TO PRICED SERVICES

[In millions of dollars]

| Year | Check | ACH | Funds transfer | Book-entry | Noncash collection | Special cash | Total |
|---|---|---|---|---|---|---|---|
| 1999 Actual | 38.8 | 3.7 | 6.0 | 0.0 | 0.1 | 0.2 | 48.8 |
| 2000 (Estimate) | 55.6 | 2.4 | 3.1 | 0.8 | 0.1 | 0.1 | 62.1 |
| 2001 (Budget) | 45.1 | 4.2 | 2.9 | 1.1 | 0.1 | 0.1 | 53.5 |

3. 2001 Projected Performance

The Reserve Banks project that they will recover 98.0 percent of total expenses related to priced services, including imputed expenses and target ROE, in 2001. The 2001 fees for priced services will result in a net income of $89.1 million, compared with a target ROE of $109.3 million. The check

[4] Under the new Reserve Bank cost accounting method, corporate overhead costs for 2001 include all of the following activities: corporate administration functions, budget preparation and control, expense accounting, and general ledger accounting. Corporate overhead costs for 1999 and 2000 also included all or a portion of central mail operations, legal, records management and contingency planning, motor vehicles, and audit, which have now become support costs.

service will recover fully the approximately $15.1 million of 2001 priced services costs associated with the check modernization special project.

4. 2000 Estimated Performance

The Reserve Banks estimate that priced services will yield a net income of $101.7 million in 2000, compared with a target ROE of $98.4 million. In 2000, the Reserve Banks estimate that they will recover 100.4 percent of the costs of providing priced services, including imputed expenses, all check modernization special project costs, and target ROE, compared with a target recovery rate of 99.0 percent.[5]

5. 1999 Performance

In 1999, the Reserve Banks'' priced services revenue yielded a net income of $80.6 million, compared with a targeted ROE of $56.0 million. The Reserve Banks recovered 102.9 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 101.0 percent. The Reserve Banks recovered a larger-than-expected percentage of costs because of higher volumes, midyear increases in check prices, and increased pension credits.

In 1999, the Reserve Banks completed their recovery of transition costs associated with the automation consolidation project (special project costs) and associated financing costs. In addition to facilitating fee reductions in electronic payment services, the consolidation initiative has dramatically improved the Reserve Banks' disaster recovery and information security capabilities, increased the System's responsiveness to change, and enhanced the central bank's management of payment system risk.

*C. Check*

Table 4 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the check service.

TABLE 4.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 − 2] | 4 Target ROE | 5 Recovery rate after target ROE [1/(2+4)] (percent) |
|---|---|---|---|---|---|
| 1999 | 707.3 | 649.8 | 57.5 | 45.1 | 101.8 |
| 2000 (Estimate) | 762.2 | 678.9 | 83.3 | 80.8 | 100.3 |
| 2001 (Budget) | 816.1 | 745.2 | 70.9 | 90.3 | 97.7 |

1. 1999 Performance

The check service recovered 101.8 percent of total costs in 1999, including imputed expenses and targeted ROE. Higher-than-anticipated volume growth at most Reserve Banks and midyear price increases helped actual cost recovery to exceed the targeted rate of 101.0 percent. The volume of checks collected increased 3.0 percent from 1998 levels because of several factors, including the increased reliance on Reserve Bank check processing by some banks during merger-related operational changes and the introduction of new check products.

2. 2000 Performance

Through August 2000, the check service has recovered 101.0 percent of total costs, including imputed expenses and target ROE.[6] The Reserve Banks estimate that the check service will recover 100.3 percent of its costs for the full year compared with the target 2000 recovery rate of 98.7 percent. The higher recovery rate is due to improved cost controls implemented by Reserve Banks, midyear price increases at a number of Reserve Banks, and increased pension credits.

Volume growth within paper check products through August 2000 has varied from the original budget projections. Growth of the volume of forward-processed items slowed substantially from the 1999 pace as some merger and acquisition volumes that were outsourced to the Reserve Banks reverted back to the merged institutions' processing platforms. Return-item volume has been higher than anticipated Systemwide as several correspondents have stopped providing return-check services. Table 5 summarizes the year-to-date and full-year estimated growth rates for all paper check products.

TABLE 5.—PAPER CHECK PRODUCT GROWTH RATES

[Percent]

| | Budgeted 2000 growth | Volume growth through August 2000 | Estimated 2000 growth |
|---|---|---|---|
| Total forward-collected | 4.5 | 0.7 | 1.9 |
| Forward-processed | 4.7 | 2.4 | 3.0 |
| Fine-sort [a] | 2.6 | −10.2 | −9.3 |
| Returns | −2.3 | 1.3 | −1.6 |

[a] Electronic fine-sort volume is excluded from these numbers. Electronic fine-sort is a service that allows depository institutions to exchange fine-sort information electronically among themselves while also exchanging the actual checks. Including the electronic fine-sort product offered at one Reserve Bank, budgeted 2000 fine-sort volume growth is actually targeted to decrease 1.6 percent, with the estimated 2000 volume growth decreasing 14.2 percent.

[5] Through August 2000, the Reserve Banks recovered 101.5 percent of total priced services expenses, including imputed expenses, check modernization special project costs, and target ROE.

[6] Total costs include special project costs of $15.1 million. None of those costs are deferred and financed.

The Board considers the Reserve Banks' 2000 volume estimates for forward-processed items to be reasonable. The Board believes, based upon year-to-date trends, that return-volume growth may be understated.

Continuing a trend over the last few years, the Reserve Banks have seen steadily increasing demand for electronic check products. Reserve Banks provide electronic check data or images provided to paying bank for about 35 percent of checks they collect. Year-to-date 2000 demand for image products has grown to approximately 800 million items, or 7 percent of checks collected by the Reserve Banks in 2000. Growth and penetration rates for electronic check products are summarized in table 6. Given the current volume growth through August, the Board believes that Reserve Banks are underestimating demand for electronic check services.

TABLE 6.—ELECTRONIC CHECK PRODUCT PENETRATION AND GROWTH RATES

[Percent of checks collected]

| | Penetration rate through August 2000 | Year-over-year growth through August 2000 | Estimated 2000 growth |
|---|---|---|---|
| Electronic check presentment | 20.6 | 10.2 | 5.6 |
| Truncation | 5.4 | 9.8 | 4.5 |
| Non-truncation | 15.2 | 10.4 | 6.0 |
| Electronic check information | 7.3 | −7.4 | −11.9 |
| Images | 6.9 | 46.2 | 34.8 |

3. 2001 Pricing

For the coming year, the Reserve Banks will focus on the check modernization initiatives to standardized check processing across all Reserve offices. The Board expects the Reserve Banks to incur significant transition costs associated with these initiatives over the next several years. These initiatives include

- Check standardization—implement a standard, centrally managed, check-processing environment at all Reserve Banks
- Enterprise-wide adjustments—implement a standard, centrally managed, enterprise-wide adjustments system at all offices
- Image services system—redesign the current image-processing infrastructure based on a standard, centrally managed, single platform
- Electronic access and delivery—design and execute a strategy to provide customers with remote electronic access and delivery of check services over the Internet.

The check modernization initiatives are expected to reduce costs and improve service over the long term. This effort will lead to better quality and more technologically advanced products and services for customers, greater flexibility and responsiveness to customer needs and requirements, and more consistent price and product structures across the Reserve Banks. Ultimately, the efficiencies gained through the modernization initiatives should lead to cost savings at the Reserve Banks.

In 2001, per-item and cash-letter fees for all check products are increasing 3.9 percent on a volume-weighted basis compared with fees introduced in April 2000 and 2.6 percent compared with current fees. Per-item and cash-letter fees for paper-based check products are increasing at about the same rate. This increase was driven by price adjustments for both forward and return products. On a volume-weighted basis, the average per-item and fixed fees for payor bank services will increase 3.7 percent compared with April 2000 fees and 2.9 percent compared with current fees.

Table 7 provides details on the 2000 price changes.

TABLE 7.—2001 PRICE CHANGES

[Percent]

| Products | 2001 vs. April 3, 2000 fees | 2001 vs. current 2000 fees |
|---|---|---|
| All check products | 3.9 | 2.6 |
| Total paper products | 3.9 | 2.6 |
| Forward-processed | 3.6 | 2.5 |
| Fine-sort | 7.0 | 5.1 |
| Returns | 3.7 | 2.9 |
| Payor bank services | 3.7 | 2.9 |
| Electronic check presentment | 0.4 | 0.1 |

Table 8 summarizes ranges of key check fees for 2001.

TABLE 8.—SELECTED CHECK FEES

| | 2000 price ranges (per item) | 2001 price ranges (per item) |
|---|---|---|
| Items: | | |
| Forward-processed: | | |
| City | $0.004 to 0.081 | $0.005 to 0.079. |
| RCPC | $0.004 to 0.180 | $0.004 to 0.200. |

TABLE 8.—SELECTED CHECK FEES—Continued

| | 2000 price ranges (per item) | 2001 price ranges (per item) |
|---|---|---|
| Forward fine-sort: | | |
| City | $0.004 to 0.015 | $0.005 to 0.020. |
| RCPC | $0.0025 to 0.018 | $0.004 to 0.019. |
| Qualified returned checks: | | |
| City | $0.17 to 1.11 | $0.17 to 1.10. |
| RCPC | $0.21 to 1.75 | $0.21 to 1.50. |
| Raw returned checks: | | |
| City | $1.00 to 5.50 | $1.00 to 5.50. |
| RCPC | $1.00 to 5.50 | $1.00 to 5.55. |
| Cash letters: | (per cash letter) | (per cash letter) |
| Forward-processed [a] | $1.75 to 9.25 | $2.00 to 13.50. |
| Forward fine-sort | $3.00 to 14.00 | $3.00 to 14.00. |
| Returned checks: raw/qualified | $1.75 to 14.00 | $1.75 to 14.00. |
| Payor bank services: | (min.) (per item) | (fixed) (per item) |
| MICR information | $5–$30 $0.001–0.0060 | $2–$15 $0.0012–0.0060. |
| Electronic presentment | $3–$14 $0.001–0.0045 | $2–$11 $0.0010–0.0100. |
| Truncation | $3–$25 $0.004–0.0170 | $2–$10 $0.0060–0.0180. |
| Image | | $2–$15 $0.0020–0.0200. |

[a] Includes a fifty-cent check-relay surcharge due to higher fuel costs. Both bounds of the price range would decrease $0.50 if this surcharge were not included.

The Reserve Banks will adopt several pricing strategies that are designed to increase the efficiency of Reserve Bank operations, improve the quality of return-check deposits, and reduce the risk associated with the check payments system. In turn, these improvements will decrease the costs associated with processing payments, and the savings will ultimately be passed along to customers in the form of lower transaction fees. Specifically, the Reserve Banks will price for certain categories of return-item exceptions that can be identified in Reserve Bank processing operations. The Reserve Banks also will charge for processing commercial checks with a value of $10 million or more to depositing customers. It is expected that this charge will encourage customers to use electronic payment systems, such as funds transfer and ACH, for large-dollar payments. These prices will be introduced during the second quarter of 2001.

For 2001, the Reserve Banks project that the check service will recover 97.7 percent of total costs, including imputed expenses, costs associated with the check automation standardization special project, and target ROE. Total expenses are projected to increase approximately $66.3 million, or 9.9 percent, from estimated 2000 expenses. Total expenses for 2001 include approximately $67.6 million for the four check modernization projects and a special project for related extraordinary expenses, a total increase of $44 million from the 2000 estimate.

The check service is projected to have revenue in 2001 of $816.1 million from forward collection and return-item processing (81.4 percent), payor bank services (10.8 percent), and other operating and imputed revenues (7.8 percent). Total revenue is expected to increase approximately $53.9 million, or 7.1 percent, in 2001 as a result of increased service revenue ($53.4 million).

In 2001, forward-processed volume is projected to be 15.5 billion, an increase of 1.6 percent compared with the 2000 estimate. Fine-sort volumes, without electronic fine-sort, are estimated to be 1.3 billion, or 5.2 percent, less than the 2000 estimate. Fine-sort volumes including electronic fine-sort are estimated to be 2.0 billion, or 3.5 percent, less than the 2000 estimate. Total returns are projected to be 175.8 million, an increase of 0.5 percent from the 2000 estimate.

MICR presentment and MICR presentment plus volume are projected to be 2.9 billion, reflecting growth of about 17 percent in 2001. Truncation volume is expected to be 987.0 million, an increase of almost 10 percent, and image services volume is budgeted to be 1.5 billion, reflecting growth of nearly 27 percent in 2001. MICR information is projected to decrease by 1.0 billion items or about 13 percent in 2001.

The Board believes that the costs of check modernization initiatives present the greatest risk to the cost projections for the check service. In particular, staffing costs may be greater than anticipated given the competitive labor markets that exist nationwide. Further, operational costs, productivity, and service quality are at risk if there are slippages in the transition schedules or unanticipated increases in the costs for the modernization initiatives.

*D. Automated Clearinghouse (ACH)*

Table 9 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the commercial ACH service.

TABLE 9.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 1999 | 67.8 | 55.9 | 11.9 | 4.5 | 112.3 |
| 2000 (Estimate) | 70.5 | 61.4 | 9.1 | 8.0 | 101.6 |

TABLE 9.—ACH PRO FORMA COST AND REVENUE PERFORMANCE—Continued

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 2001 (Budget) | 75.5 | 66.4 | 9.1 | 8.9 | 100.2 |

1. 1999 Performance

The ACH service recovered 112.3 percent of total expenses, including imputed expenses and targeted ROE, in 1999. Commercial ACH volume was 12.5 percent higher than 1998 volume, slightly greater than the 12.0 percent increase originally projected for 1999. During the year, ACH lowered all origination fees by $0.0005.

2. 2000 Performance

Through August 2000, the ACH service recovered 103.4 percent of total expenses, including imputed expenses and target ROE. For the full year, Reserve Banks estimate that the service will recover 101.6 percent of total expenses compared with the target 2000 recovery rate of 100.0 percent. The estimated over-recovery is due to lower total expenses of 1.4 percent, which is being caused by a reduction in national support costs. The increase in total expenses since 1999 is mainly attributable to ACH's assuming a larger allocation of joint priced corporate overhead to support the check modernization initiatives.

Through August 2000, commercial ACH volume has increased 13.5 percent from the same period in 1999. For the full year, Reserve Banks expect commercial volume to increase 11.6 percent compared with the 13.9 percent increase originally projected for 2000. The Reserve Banks cite consolidation in the financial services industry as a partial driver for the lower-than-expected volumes and anticipate further volume reductions as competitive pressures increase. The Board questions whether the significantly slower growth rate that is expected through year-end reasonably reflects the effect of these competitive pressures. The Board believes that the expected growth rate may be understated.

3. 2001 Pricing

The Board recently approved modifications to the Reserve Banks' deposit deadlines and pricing practices for transactions they exchange with private-sector operators (PSOs). (65 FR 66249, November 3, 2000). The Reserve Banks are working collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. Further, the Reserve Banks are initiating discussions with the PSOs to negotiate the structure and level of fees that will be charged by the Reserve Banks as well as those fees that the Reserve Banks will pay the PSOs. The new deadlines and price structure for PSOs are intended to address the competitive concerns that have been raised by industry representatives. The new deadlines will be implemented no later than June 2001 and the price structure modifications will be implemented no later than September 2001. The specific implementation date for each of these modifications will be announced well in advance of the effective dates. The Reserve Banks will also assess a monthly settlement fee of $20 (per routing number), rather than the current monthly account-servicing fee, to depository institutions that send and receive all their transactions to and from the Reserve Banks through PSOs. The Reserve Banks no longer plan to assess origination or receipt fees directly to these depository institutions. Additionally, the Reserve Banks will charge ACH operators half the published electronic connection fee to reflect the use of the connection by both ACH operators and the Reserve Banks to send each other interoperator transactions. These changes will only apply to any intermediary that is defined as an operator under National Automated Clearing House Association (NACHA) rules. The Reserve Banks will retain the 2001 ACH prices at the current levels, except for the changes for interoperator transactions.

The Reserve Banks project that the ACH service will recover 100.2 percent of its costs in 2001, including imputed expenses and target ROE. Total expenses are projected to increase $5.9 million, or 8.5 percent, from the 2000 estimate because of growth in support and overhead costs, particularly those related to business development. Total revenue in 2001 is projected to increase $4.9 million, or 7.0 percent more than the 2000 estimate. The higher revenue is attributable to projected commercial volume growth and increased revenue from electronic connections, offset somewhat by lost revenue from the new pricing of interoperator transactions.

ACH volume in 2001 is projected to increase 12.1 percent from 2000 estimates. The 2001 volume projection assumes a rate of growth between the 12.5 percent experienced in 1999 and expected growth in 2000, which is estimated at 11.6 percent. This growth rate, revenues, and cost recovery, however, do not account for several risks in 2001. The major risks include the uncertain effects of price-structure and service-level changes being implemented for interoperator transactions, the increased competitive pressures from PSOs, and future consolidations in the financial services industry. The Board believes that a 12.1 percent growth rate may be difficult to achieve because this rate may not fully reflect these risks.

*E. Funds Transfer and Net Settlement*

Table 10 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the funds transfer and net settlement services.

TABLE 10.—FUNDS TRANSFER AND NET SETTLEMENT PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 1999 | 69.2 | 61.3 | 7.8 | 5.2 | 104.0 |
| 2000 (Estimate) | 65.1 | 57.6 | 7.5 | 7.5 | 100.0 |
| 2001 (Budget) | 63.1 | 55.6 | 7.5 | 7.5 | 100.1 |

1. 1999 Performance

For 1999, the funds transfer and net settlement services recovered 104.0 percent of total costs, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 102.0 percent. This over-recovery was primarily due to expenses $3.2 million (4.5 percent) less than original budget projections; the decrease in expenses resulted from an 11.2 percent and a 3.2 percent decrease in direct and support costs, respectively. Service revenue for 1999 was approximately $1.8 million (2.6 percent) less than original budget projections. A $0.9 million (27.7 percent) decrease in net income on clearing balances accounted for almost half of the deficit. In addition, electronic connection revenue was $0.6 million (6.2 percent) lower than anticipated due to fewer than anticipated customers signing on to services related to electronic access. The rest of the revenue shortfall was due to lower-than-anticipated volume in the highest-priced (low-volume) tier. Funds transfer volume increased 4.7 percent from the 1998 level, compared with a budgeted 5.8 percent growth.

2. 2000 Performance

Through August 2000, the funds transfer and net settlement services recovered 103.9 percent of total costs, including imputed expenses and target ROE. For full-year 2000, the Reserve Banks estimate that the funds transfer and net settlement services will recover 100.0 percent of total expenses, compared with a target recovery rate of 100.4 percent. The Board believes the Reserve Banks' estimated 2000 cost recovery is too low given year-to-date experience.

Funds transfer volume through August 2000 has increased 6.5 percent relative to the same period in 1999. For the full year, the Reserve Banks estimate a 5.7 percent volume increase compared with a budgeted increase of 6.0 percent.

3. 2001 Funds Transfer Pricing

The Reserve Banks will retain the current per-transfer fees and thresholds for volume-based discounts. The average (volume-weighted) per-transfer price would be $0.223. In addition, the Reserve Banks will retain the off-line surcharge at its current level.

Reserve Banks project that the Fedwire funds transfer service will recover 100.1 percent of total costs, including imputed expenses and target ROE, in 2001. Total costs are expected to decline $2.0 million (3.1 percent) from the 2000 estimate, primarily due to reduced operating costs of $1.4 million (2.4 percent) and a decrease in PSAF costs of $0.5 million (3.6 percent). The reduction in operating costs is mainly due to staff reductions.

Funds transfer volume is expected to decrease 1.2 percent from 2000 estimated levels, due primarily to potential shifts in volume to CHIPS. In first quarter 2001, CHIPS will introduce a new intraday finality service that will provide more risk controls and thus reduce the impediments to the use of CHIPS for some payments that are currently processed via Fedwire. The Reserve Banks anticipate a 3.0 percent decline in funds transfer volume from high-volume customers that are also CHIPS participants, partially offset by increases in volume from middle-tier customers. Revenue is projected to decline $2.0 million (3.1 percent) in 2001 compared with the 2000 estimate because of slightly lower 2001 volume and the full-year effects of the April 2000 on-line fee reductions.

4. 2001 Net Settlement Pricing

The Reserve Banks will retain the local and enhanced net settlement fees at the 2000 price levels. The enhanced net settlement service will be fully implemented during 2001 as local settlement services are phased out by year-end.

*F. Book-Entry Securities*

Book-entry securities includes purchase and sale activity. Table 11 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the book-entry securities service.[7]

TABLE 11.—BOOK-ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 1999 | 17.3 | 15.1 | 2.2 | 1.0 | 107.4 |

[7] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury Department, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Treasury Department assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the money settlement component of a Treasury securities transfer; this component is not treated as a priced service.

TABLE 11.—BOOK-ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE—Continued

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 2000 (Estimate) | 18.0 | 15.7 | 2.3 | 1.9 | 102.4 |
| 2001 (Budget) | 19.9 | 18.6 | 1.3 | 2.3 | 94.9 |

1. 1999 Performance

The book-entry securities service recovered 107.4 percent of total costs in 1999, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 105.2 percent.[8] Service revenue for 1999 was approximately $650,000 (3.9 percent) greater than original budget projections. Origination volume increased 0.6 percent from the 1998 level, compared with an expected decrease of 5.7 percent. The increase in volume resulted from a general increase in mortgage-debt refinancing and a higher-than-expected issuance of mortgage-backed securities.

2. 2000 Performance

Through August 2000, the book-entry securities service recovered 106.4 percent of total costs, including imputed expenses and target ROE. For full-year 2000, the Reserve Banks estimate that the book-entry securities service will recover 102.4 percent of total costs, compared with a target recovery rate of 101.3 percent. This higher-than-budgeted recovery rate reflects revenue that is 6.1 percent greater than budget. The increase in revenue is due to higher-than-expected volumes.

Book-entry securities transfer volume has increased 7.5 percent from February 2000 to August 2000 compared with the same period in 1999.[9] The full-year growth rate for origination volume is expected to be 4.8 percent more than actual 1999 volumes, compared with the flat projections originally forecast at the beginning of the year. Like the increase in 1999, this volume increase is due to an increase in mortgage-debt refinancing and greater use of agency securities as a hedge against other investment risks.

3. 2001 Pricing

Except as noted below, the Reserve Banks will retain all fees in 2001 at their current levels. There will be a $7 increase to the off-line surcharge to originate and receive a transfer, to $25, to better reflect the costs of providing off-line transfers for book-entry securities.

The purchase and sale service represents less than 1 percent of the costs and revenues of the book-entry securities service line. Provision of this service, which facilitates the purchase and sale of Treasury and government agency securities by depository institutions on the secondary market, is consolidated at the Federal Reserve Bank of Chicago. The Reserve Banks will maintain the $40 transaction fee for securities purchases and sales.

The Reserve Banks project that the book-entry securities service will recover 94.9 percent of costs in 2001, including imputed expenses and target ROE. Excluding target ROE, expenses are projected to increase $2.9 million (18.3 percent) from the 2000 estimate. This is primarily due to the implementation of the new book-entry cost allocation model that will shift more costs to the priced portion of the service.

Book-entry securities transfer volume is projected to increase 8.9 percent compared with the 2000 estimate. The 18.3 percent increase in total book-entry expenses is expected to be partially offset by a $1.8 million (10.2 percent) increase in revenue from the projected start of the conversion of Government National Mortgage Association (Ginnie Mae) securities to the National Book-Entry System (NBES) during the fourth quarter of 2001. Full recovery under the new cost-allocation approach is expected in 2002 when the conversion of Ginnie Mae to NBES has been completed.

*G. Noncash Collection*

Table 12 lists the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the noncash collection service.

TABLE 12.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| Year | 1 Revenue | 2 Total Pexpense | 3 Net income (ROE) [1 – 2] | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 1999 | 3.0 | 2.0 | 1.0 | 0.1 | 140.3 |
| 2000 (Estimate) | 2.4 | 2.0 | 0.4 | 0.2 | 110.8 |
| 2001 (Budget) | 2.0 | 1.7 | 0.2 | 0.2 | 102.2 |

[8] In 1999, the book-entry service recovered the last $1.7 million remaining from the Reserve Banks' automation consolidation special project. All costs associated with this special project have now been fully recovered.

[9] Before February 1999, the Federal Reserve did not charge customers for book-entry receipts. Therefore, the volume data before February 1999 includes only originations whereas the data after February 1999 includes both originations and receipts. A comparison of volumes using January 1999 data would skew the results.

1. 1999 Performance

The noncash collection service recovered 140.3 percent of total expenses in 1999 (including imputed expenses and targeted ROE) compared with a targeted recovery rate of 118.6 percent. Volume for 1999 decreased 18.8 percent from 1998 levels compared with a 26.6 percent budgeted volume decline. The volume decline was less than budgeted levels because of both unexpected called-bond activity and higher-than-expected coupon volume.

2. 2000 Performance

Through August 2000, the noncash collection service recovered 119.3 percent of its costs. For full-year 2000, the Reserve Banks estimate that the noncash collection service will recover 110.8 percent of costs, including imputed expenses and target ROE, compared with the target recovery rate of 108.5 percent. Through August, volume declined 15 percent compared with the same period in 1999, while the overall industry experienced a volume decline of 18 to 20 percent for the same period. The Reserve Banks estimate that full-year 2000 volume will decline 17.1 percent from 1999 levels compared with a 31.5 percent budgeted decline. Volume decline is expected to be lower than budgeted in part because the service received unexpected volume from existing and new customers as well as higher-than-budgeted bond collections from called and maturing securities. The estimated volume decline for the year is slightly greater than the actual decline for the first eight months of the year because of the recent withdrawal of volume by the System's largest depositor of noncash items.

3. 2001 Pricing

The Reserve Banks will increase one fee relative to 2000 fee levels. Specifically, the Reserve Banks will increase the return-item fee from $15 to $20 for items that are returned to the depositor as uncollected. The Reserve Banks project that the noncash collection service will recover 102.2 percent of total costs, including imputed expenses and target ROE, in 2001.

Total expenses are projected to decline approximately $0.2 million, or 10.8 percent, in 2001. Despite the higher return-item fee, the Reserve Banks project that revenue will decline approximately $0.4 million, or 17.7 percent, in 2001, because of a projected volume decline of 20.9 percent. The projection is based on the recent loss of the Reserve Banks' largest depositor, which has begun to process its own volume, and the overall industry volume decline.

New issues of bearer municipal securities effectively ceased in 1983 when the Tax Equity and Fiscal Responsibility Act of 1982 removed the tax advantage for investors. Volume declines will continue as the number of unmatured bearer municipal securities declines. The Reserve Banks' Cash Fiscal Product Office estimates that in a few years, the steadily declining number of bearer securities will make full cost recovery in this service unlikely. The Board is working with the Reserve Banks to determine the long-term strategy for this service.

*H. Special Cash*

Priced special cash services represent a very small portion (less than one percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include the provision of wrapped coin, packaging of nonstandard currency orders and deposits as well as coin deposits, and shipping of currency and coin by registered mail. Table 13 presents the actual 1999, estimated 2000, and projected 2001 cost-recovery performance for the special cash service.

TABLE 13.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

| Year | 1 Revenue | 2 Total expense | 3 Net income (ROE) (1 – 2) | 4 Target ROE | 5 Recovery rate after target ROE (percent) [1/(2+4)] |
|---|---|---|---|---|---|
| 1999 | 3.0 | 2.9 | 0.2 | 0.0 | 103.8 |
| 2000 (Estimate) | 2.2 | 2.1 | 0.2 | 0.1 | 103.4 |
| 2001 (Budget) | 1.8 | 1.7 | 0.1 | 0.1 | 100.6 |

1. 1999 Performance

In 1999, the special cash service recovered 103.8 percent of total expenses, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 105.8 percent.

2. 2000 Performance

Through August 2000, the special cash service recovered 99.3 percent of total expenses, including imputed expenses and target ROE. For full-year 2000 the Reserve Banks estimate, however, that the special cash service will recover 103.4 percent of total expenses, compared with a target recovery rate of 101.6 percent. Revenue is estimated to decrease approximately $0.8 million, or 26.1 percent, and total costs in 2000 are estimated to decrease slightly more than $0.8 million, or 28.9 percent, compared with 1999 costs. The estimated revenue and cost decreases are due mainly to the elimination of the wrapped-coin business in Cleveland and of the registered mail business in the Dallas and San Francisco Districts.

3. 2001 Pricing

For 2001, the Reserve Banks project that the special cash service will recover 100.6 percent of costs, including imputed expenses and target ROE. Total costs in 2001 are projected to decline $0.3 million, or 15.4 percent, from the 2000 level. Revenue in 2001 is expected to decline $0.4 million, or 18.3 percent.

The anticipated revenue and cost reductions are due primarily to the full-year effects of the Fourth District's decision to exit the coin-wrapping business in April 2000 and the Eleventh and Twelfth Districts' decisions to exit the registered mail business in late August 2000.

Beginning in 2001, the El Paso office will increase the fee for Express Cash Orders from $60.00 to $80.00. Boston will increase the surcharge for registered mail from $30 to $45 and decrease the insurance fee from $0.80 to $0.50 per $1,000 in excess of the first $25,000. The Tenth District will increase the surcharge for registered mail from $13 to $16 and the insurance fee from $0.27 to $0.32.

## II. Private-Sector Adjustment Factor

*A. Background*

Each year, as required by the Monetary Control Act, the Reserve Banks set fees for ''priced services'' to depository institutions. These fees are set to recover all direct and indirect costs and imputed costs, such as financing costs, return on capital, taxes, and certain other expenses that would have been paid had the services been provided by a private business firm. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest (asset size) bank holding companies (BHCs). The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF).

1. Cost of Capital

The method for calculating the PSAF involves determining the value of Federal Reserve assets that will be used in providing priced services during the coming year, the financing mix used to fund them, and the rates paid for this financing. Assets are determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. Short-term assets are assumed to be financed with short-term liabilities and long-term assets are assumed to be financed with a combination of long-term debt and equity.

The long-term debt and equity rates are based on the average of these elements for BHCs in the model for each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

2. Income Taxes

For simplicity, given that federal corporate tax rates are graduated, various credits and deductions can apply and state taxes vary, a specific tax rate is not calculated for Federal Reserve priced services. Instead, imputed taxes are captured by using a pretax return on equity (ROE). This result influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The use of the pretax return on equity assumes a 100 percent recovery of expenses, including the target return on equity, will be achieved. The PSAF is, therefore, based on a precise matching of revenues and actual and imputed costs. Should the pretax earnings be over or under the target ROE, the PSAF is adjusted (''variable PSAF'') for the tax expense or savings associated with the adjusted recovery. The tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs are invested in municipal bonds.

3. Other

The PSAF also comprises the estimated expenses of the Board of Governors related to priced services. An assessment for FDIC insurance is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

*B. Discussion*

The increase in the 2001 PSAF is due to higher priced service asset levels, primarily the net pension asset. Partially offsetting the increase in asset levels is the inclusion of short-term payables as a source for financing short-term assets.

1. Asset Base

The total estimated value of Federal Reserve assets to be used in providing priced services in 2001 is reflected in Table 14. Table 15 shows that the assets assumed to be financed through debt and equity are projected to total $1,162.4 million. This amount represents an increase of $45.9 million, or 4.1 percent, from the assets financed in 2000. Growth of $105.1 million in the net pension asset accounts for the majority of the increase, while higher Reserve Bank building and equipment assets account for an additional $20.9 million.

Partially offsetting the increase in asset levels is a reduction of $80.1 million resulting from the inclusion of short-term payables as a financing source. Only those short-term assets that cannot be financed with actual (rather than imputed) short-term liabilities, such as sundry items payable, earnings credits due depository institutions, and accrued expenses, are financed with short-term debt. This is a change for 2001, recognizing that these non-imputed liabilities could be used to finance assets, which resulted in a $4.0 million decrease in PSAF.

2. Cost of Capital and Taxes

Table 15 also shows the financing and tax rates and the other required PSAF recoveries for 2001 and the rates used for developing the PSAF for 2000. The pretax ROE rate increased from 23.3 percent for 2000 to 24.0 percent for 2001. The effective tax rate to be used in 2001 remains unchanged from the 2000 rate at 31.5 percent.

3. Capital Adequacy and FDIC Assessment

As shown in table 16, the amount of capital imputed for the 2001 PSAF totals 30.8 percent of risk-weighted assets and 5.3 percent of total assets. The capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines for well-capitalized institutions and BHCs. As a result of these capital ratios, the FDIC assessment decreased from $2.9 million for 2000 to zero for 2001.

## III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.'' [10] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The Board does not believe that these fees and fee structures will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Assuming the Reserve Banks' volume and cost projections are accurate, these fees are set to provide the Federal Reserve a return on equity similar to that earned by large BHCs and provide for full cost recovery over the long run.

[10] FRRS 7–145.2.

TABLE 14.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[In millions of dollars—average for year]

| | 2001 | 2000 |
|---|---|---|
| Short-term assets: | | |
| Imputed reserve requirement on clearing balances | $742.4 | $762.2 |
| Investment in marketable securities | 6,681.9 | 6,859.5 |
| Receivables [11] | 77.3 | 74.2 |
| Materials and supplies [11] | 3.6 | 3.4 |
| Prepaid expenses [11] | 23.4 | 21.4 |
| Items in process of collection | 3,606.7 | 3,804.2 |
| Total short-term assets | 11,135.3 | 11,524.9 |
| Long-term assets: | | |
| Premises [11 12] | 417.5 | 411.7 |
| Furniture and equipment [11] | 185.5 | 180.1 |
| Leasehold improvements and long-term prepayments [11] | 73.9 | 64.2 |
| Prepaid pension costs [11] | 718.5 | 599.8 |
| Total long-term assets | 1,395.4 | 1,255.8 |
| Total Assets | 12,530.7 | 12,780.7 |
| Short-term liabilities: | | |
| Clearing balances and balances arising from early credit of uncollected items | 7,424.3 | 7,621.7 |
| Deferred credit items | 3,606.7 | 3,804.2 |
| Short-term debt [13] | 18.9 | 99.0 |
| Short-term payables [14] | 85.4 | 0.0 |
| Total short-term liabilities | 11,135.3 | 11,524.9 |
| Long-term liabilities: | | |
| Postemployment/retirement benefits [11] | 251.9 | 238.3 |
| Long-term debt [13] | 479.1 | 400.9 |
| Total long-term liabilities | 731.0 | 639.2 |
| Total liabilities | 11,866.3 | 12,164.1 |
| Equity [13] | 664.4 | 616.6 |
| Total liabilities and equity | 12,530.7 | 12,780.7 |

NOTE: Details may not add to totals due to rounding.

[11] Financed through PSAF; other assets are self-financing.

[12] Includes allocations of Board of Governors' assets to priced services of $0.7 million for 2001 and $0.5 million for 2000.

[13] Imputed figures represent the source of financing for certain priced services assets.

[14] For the 2001 PSAF, short-term payables attributable to priced services are included as a financing source for short-term assets such as receivables, materials and supplies, and prepaid expenses.

TABLE 15.—DERIVATION OF THE 2001 AND 2000 PSAF

[In millions of dollars]

| | 2001 | 2000 |
|---|---|---|
| A. Assets to be financed [15]: | | |
| Short-term [16] | $18.9 | $99.0 |
| Long-term [17] | 1,143.5 | 1,017.5 |
| | 1,162.4 | 1,116.5 |
| B. Weighted average costs: | | |
| 1. Capital Structure [18]: | | |
| Short-term debt (percent) | 1.6 | 8.9 |
| Long-term debt (percent) | 41.2 | 35.9 |
| Equity (percent) | 57.2 | 55.2 |
| 2. Financing rates/costs [18]: | | |
| Short-term debt (percent) | 4.7 | 5.1 |
| Long-term debt (percent) | 6.5 | 6.6 |
| Pretax equity (percent) | 24.0 | 23.3 |
| 3. Elements of capital costs: | | |
| Short-term debt | $18.9×4.7%=$0.9 | $99.0×5.1%=$ 5.0 |
| Long-term debt | $479.1×6.5%=31.1 | $400.9×6.6%=26.5 |
| Equity [19] | $664.4×24.0%=159.5 | $616.6×23.3%=143.7 |
| | $191.5 | $175.2 |
| C. Other required PSAF recoveries: | | |
| Sales taxes | $10.5 | $10.4 |
| Federal Deposit Insurance assessment | 0.0 | 2.9 |
| Board of Governors expenses | 4.9 | 4.2 |

TABLE 15.—DERIVATION OF THE 2001 AND 2000 PSAF—Continued

[In millions of dollars]

| | 2001 | 2000 |
|---|---|---|
| | 15.4 | 17.5 |
| D. Total PSAF recoveries | $206.9 | $192.6 |
| As a percent of assets | 17.8 | 17.3 |
| As a percent of expenses [20] | 24.5 | 28.5 |
| E. Tax Rate (percent) | 31.5 | 31.5 |

NOTE: Details may not sum to totals due to rounding.

[15] Priced service assets are based on the direct determination of assets method.

[16] For 2001, short-term assets consist only of those short-term assets that are not financed with short-term payables.

[17] Consists of total priced long-term assets less postretirement/postemployment benefit liabilities.

[18] For 2001, net short-term assets are assumed to be financed with short-term debt, for 2000 all short-term assets are assumed to be financed with short-term debt. Of the total long-term assets for 2001, 41.9% are assumed to be financed with long-term debt and 58.1% with equity.

[19] The pretax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pretax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pretax return on equity for use in the PSAF.

[20] System 2001 budgeted priced service expenses less shipping are $842.8 million.

TABLE 16.—COMPUTATION OF 2001 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

(millions of dollars)

| | Assets | Risk weight assets | Weighted |
|---|---|---|---|
| Imputed reserve requirement on clearing balances | $742.4 | 0.0 | $0.0 |
| Investment in marketable Securities | 6,681.9 | 0.0 | 0.0 |
| Receivables | 77.3 | 0.2 | 15.5 |
| Materials and supplies | 3.6 | 1.0 | 3.6 |
| Prepaid expenses | 23.4 | 1.0 | 23.4 |
| Items in process of collection | 3,606.7 | 0.2 | 721.3 |
| Premises | 417.5 | 1.0 | 417.5 |
| Furniture and equipment | 185.5 | 1.0 | 185.5 |
| Leases, leasehold improvements & long-term prepayments | 73.9 | 1.0 | 73.9 |
| Prepaid pension costs | 718.5 | 1.0 | 718.5 |
| Total | 12,530.7 | | 2,159.2 |
| Imputed equity for 2001 | $664.4 | | |
| Capital to risk-weighted assets (percent) | 30.8 | | |
| Capital to total assets (percent) | 5.3 | | |

NOTE: Details may not sum to totals due to rounding.

AUTOMATED CLEARING HOUSE FEE SCHEDULE [21]

| | Fees |
|---|---|
| Origination (per item or record) [22]: | |
| Items in small files | $0.0055 |
| Items in large files | 0.0045 |
| Addenda record | 0.0020 |
| Receipt (per item or record): | |
| Item | 0.007 |
| Addenda record | 0.002 |
| Input file processing fees (per file): | |
| Small file | 1.75 |
| Large file | 6.75 |
| Monthly fees: | |
| Account servicing fee (per routing number) | 25.00 |
| Information extract file | 10.00 |
| Return item/notification of change (NOC) fees [23]: | |
| Voice response return/NOC [24] | 2.00 |
| Nonelectronic input/output fees [25]: | |
| Tape input/output | 25.00 |
| Paper output | 15.00 |
| Diskette output | 15.00 |
| Facsimile return/NOC [26] | 15.00 |
| Cross-border fees: | |
| Cross-border item | 0.037 |
| Same-day recall of item at receiving gateway operator | 3.50 |
| Same-day recall of item not at receiving gateway operator | 5.00 |
| Item trace | 5.00 |

AUTOMATED CLEARING HOUSE FEE SCHEDULE [21]—Continued

| | Fees |
|---|---|
| Microfiche | 3.00 |
| Delivery by courier [27] | 10.00 |

[21] This fee schedule does not reflect the price changes for interoperator transactions.
[22] Small files contain fewer than 2,500 items and large files contain 2,500 or more items.
[23] The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee and conversion fee.
[24] The fee includes the transaction fee in addition to the voice-response fee.
[25] These services are offered in contingency situations only.
[26] The fee includes the transaction fee in addition to the conversion fee.
[27] The courier charge is in addition to the fee charged by the Reserve Banks.

FUNDS TRANSFER AND NET SETTLEMENT FEE SCHEDULE

| | Fees |
|---|---|
| Funds transfer: | |
| Volume-based pricing fees (originations and receipts): | |
| Per transfer for the first 2,500 transfers per month | $0.33 |
| Per transfer for additional transfers up to 80,000 per month | 0.24 |
| Per transfer for every transfer over 80,000 per month | 0.17 |
| Surcharge: | |
| Off-line transfer originated | 15.00 |
| Telephone notification | 15.00 |
| Net settlement: | |
| Basic fee (settlement sheet and enhanced NSS): | |
| Settlement charge per entry | 0.95 |
| Settlement file charge | 12.00 |
| Surcharge: | |
| Off-line origination per file [28] (settlement sheet) | 15.00 |
| Telephone notification per file (settlement sheet and enhanced NSS) | 15.00 |
| Minimum monthly fee | 60.00 |
| Fedwire-based, small-dollar arrangement per settlement day [29] | 100.00 |
| Fedwire-based, large-dollar arrangement per settlement day [29] | 100.00–175.00 |

[28] The off-line origination surcharge will be waived by Reserve Banks that do not provide an electronic submission capability for the settlement sheet service.
[29] Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

BOOK-ENTRY SECURITIES FEE SCHEDULE

| | Fees |
|---|---|
| Book-entry securities transfer: | |
| Basic transfer fee: | |
| Transfer originated | $0.70 |
| Transfer received | 0.70 |
| Reversal originated | 0.70 |
| Reversal received | 0.70 |
| Surcharge: | |
| Off-line transfer originated or received | 25.00 |
| Off-line reversal originated or received | 25.00 |
| Monthly maintenance fees: | |
| Account maintenance (per account) | 15.00 |
| Issues maintained (per issue/per account) | 0.45 |
| Purchase & sale: | |
| Transaction fee | 40.00 |

NONCASH COLLECTION FEE SCHEDULE

| | Fees |
|---|---|
| Coupon collection: | |
| Cash letters: | |
| With five or fewer coupon envelopes | $7.50 |
| With six to fifty coupon envelopes | 15.00 |
| Coupon envelopes: | |
| With five or fewer coupon envelopes | 4.75 |
| With six to fifty coupon envelopes | 2.50 |
| Return items | 20.00 |

NONCASH COLLECTION FEE SCHEDULE—Continued

| | Fees |
|---|---|
| Bond collection (per bond): | [30] 40.00 |

[30] Plus actual shipping costs.

SPECIAL CASH SERVICES FEE SCHEDULE

| | Fee | |
|---|---|---|
| Wrapped coin (per box [31]): | | |
| All Fourth District offices | Discontinued April 2000. | |
| Helena | $2.25. | |
| Nonstandard packaging: | | |
| Seventh District offices (per currency order or deposit) | $12.00.[32] | |
| Helena (per coin bag deposited) | $2.00. | |
| El Paso (express cash orders) | $80.00.[33] | |
| | Surcharge | Insurance fee [35] |
| Registered mail fees [34]: | | |
| First District | $45.00 | $0.50. |
| Helena [36] | $14.00 | |
| Tenth District offices | $16.00 | $0.32. |
| El Paso | Discontinued August 2000. | |
| Twelfth District offices | Discontinued August 2000. | |

[31] There are 50 rolls of coin in each box.
[32] This service only applies to the $1 through $20 denominations.
[33] El Paso's Express Cash Order fee applies only to orders that need to be prepared on the same day as notice is received from depository institutions.
[34] Depository institutions also pay any postage fees incurred for registered mail. Postage fees are billed separately from Federal Reserve Bank surcharges and insurance fees.
[35] Insurance fees are based on every $1,000 shipped via the registered mail service in excess of the first $25,000, which is covered by the U.S. Postal Service.
[36] The Helena Office only ships registered mail packages valued up to $25,000, so no additional insurance is needed in excess of the $25,000 covered by the U.S. Postal Service.

**Electronic Connection Fee Schedule [37]**

The Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services and allocate cost and revenue associated with electronic access to the various priced services.

| | Per month |
|---|---|
| Current FEDNET Network: | |
| Dial—receive and send (FedLine®) | $75.00 |
| Link encrypted dial | 200.00 |
| High-speed dial @ 56 kbps | 350.00 |
| Multi-drop leased line | 500.00 |
| Dedicated leased line (to 9.6 kbps) | 750.00 |
| High-speed leased line @ 19.2 kbps | 850.00 |
| High-speed leased line @ 56 kbps | 1,000.00 |
| High-speed leased line @ 128 kbps | 1,800.00 |
| High-speed leased line @ 256 kbps | 2,000.00 |
| Cross-District | Actual cost [38] |
| Frame Relay Network: | |
| Frame Relay—Fedline @ up to 19.2 kbps [39] | 500.00 |
| Frame Relay—Computer Interface (CI) @ 56 kbps | 1,000.00 |
| Frame Relay—CI @ 256 kbps | 2,000.00 |
| Frame Relay—CI T1 | 2,500.00 |

[38] The customer will pay the actual costs of the circuit and a monthly surcharge to cover an equitable share of expenses associated with customer support, depreciation of hardware (that is, link encryption units), and other overhead expenses. This fee must be, at a minimum, equivalent to the standard fee for the particular type of leased line connection.
[39] The Frame Relay FedLine 19.2 kbps connection is identical to the Frame Relay 56 kbps connection except for the following: (a) redundant equipment is not included with the 19.2 kbps option; and (b) the speed limitation of 19.2 kbps is imposed by FedLine. This connection is otherwise capable of operating at 56 kbps.

[37] Installation, training, contingency hardware, and software certification are not considered priced services, and the fees for these services are not listed here. For a copy of the full electronic access fee schedule, contact the local Federal Reserve Bank.

**Test and Contingency Options** [40]

| Connection type | Logical split | Full circuit backup | Frame connection only | Redundant components |
|---|---|---|---|---|
| Fedline @ up to 19.2 kbps | No charge | $500 | $420 | N/A |
| CI @ 56 kbps | No charge | 845 | 765 | 155 |
| CI @ 256 kbps | No charge | 1,750 | 1,585 | 250 |
| CI T1 | No charge | 2,230 | 2,010 | 270 |

Logical split: Applies to production and test systems that are located together at the same facility. The institution could use the production equipment with a logical split (different port) in their router as a test or contingency facility. There is no additional cost for this option.

Full circuit backup: Applies to production and test systems, or production and contingency systems, that are located at separate facilities, including another bank office or a third-party contingency site.[41] This option replicates full production technology and costs; only one set of equipment components is provided.

Frame connection only: Applies to production and test systems, or production and contingency systems, that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Only one set of equipment components is provided.[42]

Redundant components: Includes a Cisco router, CSU/DSU, encryptor and rack.[43]

By order of the Board of Governors of the Federal Reserve System, November 8, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–29384 Filed 11–16–00; 8:45 am]

BILLING CODE 6210–01–P

[40] Test and contingency options, including redundant parts, are only available to customers with a primary connection.

[41] Prices shown are for full circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit.

[42] Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider will result in custom implementations. Districts will bill the vendor's bank for the contingency circuit.

[43] Redundant components are available only for the following connections: CI 56 kbps, CI 256 kbps, and CI T1. Customers with FedLine 19.2 kbps connections that require redundant equipment will be obliged to upgrade their connection to CI 56 kbps.

## FEDERAL RESERVE SYSTEM

### Sunshine Meeting Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10 a.m., Wednesday, November 22, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters 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: November 15, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–29575 Filed 11–15–00; 11:52 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Public Workshop: The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice announcing workshop.

**SUMMARY:** The Federal Trade Commission (''Commission'') has set December 11–12, 2000 as the dates for a public workshop examining emerging wireless Internet and data technologies and the privacy, security, and consumer protection issues they raise.

**DATES:** The workshop will be held December 11–12, 2000 in the Commission Meeting Room (432), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** For questions about the workshop, contact: Ellen Finn, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3296, e-mail efinn@ftc.gov; Stacy Feuer, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3072, e-mail sfeuer@ftc.gov.

**SUPPLEMENTARY INFORMATION:**

**The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Protection Issues**

*Workshop Goals*

One of the Commission's principal missions is to protect consumers from unfair and deceptive acts or practices. In recent years, the Internet and other new technologies have had a significant effect on this mission and the Commission has held numerous public workshops on issues related to the emerging global electronic marketplace. These workshops provide an opportunity for the Commission and the public to learn about these technologies changes and for the Commission to learn how best to provide guidance to both consumers and businesses. These workshops also provide an opportunity for businesses to learn about the Commission's consumers protection and competition concerns. In the past, the Commission has hosted forums on such topics as online consumer privacy issues, advertising disclosures in new media, on-line dispute resolution mechanisms, and business to business electronic marketplaces.

Mobile wireless Internet and data technologies raise money of the privacy and advertising issues previously considered by the Commission.

Accordingly, the goal of the announced workshop is to educate government officials and other interested parties about emerging wireless technologies, and to provide a forum for discussion of the privacy, security, and consumer protection issues raised by these new technologies.

*Questions To Be Addressed*

(1) Mobile Technology and Business Models

(a) Where is wireless Internet and data technology today and where is it going? What devices are currently available for wireless Web access and data services? What sorts of devices and services are anticipated? How will mobile commerce or ''m-commerce'' develop?

(b) How do wireless Internet and data services function? What types of relationships will consumers have with wireless equipment makers, carriers, data service providers and others involved in the provision of these services? Will consumers' wireless data services be supported by advertising (as many Internet site are), or will consumers pay for subscriptions (like cable television) or pay fees-per-service accessed?

(2) Privacy and Security

What privacy and security issues do wireless devices raise? For example, how will location information be used (generally and more particularly with respect to advertising) and what are the privacy and security implications of the availability of location information? Is transmission of personal information secure in the wireless medium? As wireless devices converge so that cell phones, personal digital assistants, and electronic wallets may become a single device, how are the risks of identity theft increased and what security measures are possible?

Within this broad topic, the workshop would address existing regulatory structures and existing or emerging self-regulatory initiatives, as well as technological methods of addressing privacy and security concerns.

(3) Disclosures

How can companies make effective disclosures on small screens (both advertising and privacy disclosures)? Particularly as devices move to a combination of voice and text communication, how do traditional concepts like ''clear and conspicuous'' and ''equal prominence'' apply? Are there other aspects of this unique medium that will require modification of traditional consumer protection approaches?

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–29471 Filed 11–16–00; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board Federal Financial Accounting Standards

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice of New Exposure Draft *Eliminating Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others.*

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, *Eliminating Disclosures Related To Tax Revenue Transactions By The Internal Revenue Service, Customs, and Others.*

*A summary of the proposed Statement follows:*

On November 13, 2000, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting. The amendment would eliminate the current requirement to disclosure certain information about taxes receivable. The exposure draft, entitled Elimination of Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others, Amending Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources, will be out for comment until February 16, 2001.

SFFAS No. 7 applies to entities collecting taxes on behalf of the Federal Government. The two entities collecting the vast majority of Federal taxes are the Internal Revenue Service (IRS) and the U.S. Customs Service (Customs). The Board has concluded that the disclosures required by SFFAS No. 7 do not accomplish a reconciliation of account balances and would mislead those attempting to evaluate IRS' and other tax-collecting entities' performance regarding taxes receivable. The disclosures include compliance activity that precedes the recognition of taxes receivable. Certain supplementary information on compliance assessments, preassessment work in process, claims for refunds, and write-offs would continue to be required as supplementary information.

Two Board members disagree with the decision of the majority. They would retain the disclosure requirement.

The exposure draft will soon be mailed to FASAB's mailing list subscribers. Additionally, it is available on FASAB's home page *http://www.financenet.gov/fasab.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *fontenroser.fasab@gao.gov.* The Board has posed specific questions for comment. Respondents are encouraged to address those questions and to comment on any part of the exposure draft. For further information call Richard Fontenrose (202) 512–7358.

Written comments are requested by February 16, 2001, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW, Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., NW, Room 6814, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 13, 2000.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 00–29419 Filed 11–16–00; 8:45 am]

BILLING CODE 1610–01–M

## GENERAL ACCOUNTING OFFICE

### Notice of Meetings

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice of meetings through June 2001.

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Thursday, December 7 and Friday, December 8 from 9 a.m. to 4 p.m. in room *6N30*, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss issues related to:

—National Defense PP&E;
—Stewardship Reporting;
—Corrections of Errors through Prior Period adjustments;

—Charter and Operating Procedures for the Accounting and Auditing Policy Committee;
—Technical Agenda; and
—Outreach.

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with the Board meeting. A more detailed agenda can be obtained from the FASAB website (*www.financenet.gov/fasab.htm* after November 30, 2000.

Following the December meeting, the schedule for the next three meetings of the Board is as follows:

—Thursday and Friday, February 22 and 23, 2001;
—Thursday and Friday, April 26 and 27, 2001; and
—Monday and Tuesday, June 18 and 19, 2001.

The purpose of these meetings will be to discuss issues related to:

—Stewardship Reporting;
—National Defense Property, Plant & Equipment;
—Deletion of Paragraph 65.2—Material Revenue—Related Transaction Disclosures;
—Natural Resources;
—Correction of Errors Through Prior Period Adjustments;
—Codification of FASAB Standards;
—Accounting and Auditing Policy Committee issues; and
—Any other topics as needed.

A Steering Committee meeting of the Board's Principal Board members will be held in conjunction with each of the Board meetings. A more detailed agenda for each Board meeting can be seen on the FASAB website *www.financenet.gov/fasab.htm* one week prior to each meeting. The location of each meeting will be given in the website agenda.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the December meeting, please notify FASAB by December 6 of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 13, 2000.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 00–29418 Filed 11–16–00; 8:45 am]

**BILLING CODE 1610–01–M**

## GENERAL SERVICES ADMINISTRATION

**[GSA Order ADM 1095.1F]**

## Environmental Considerations in Decisionmaking

**AGENCY:** Public Buildings Service, General Services Administration.

**ACTION:** Notice of final revisions to internal procedures.

**SUMMARY:** This notice announces that GSA is publishing final revised internal GSA procedures to be followed in implementing the requirements of section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, ital.); Executive Order 11514 of March 5, 1970, entitled ''Protection and Enhancement of Environmental Quality,'' and in compliance with regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). The intended effect of these documents is to enhance GSA's ability to comply with NEPA, to exclude certain program actions from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS), to focus NEPA analysis to those actions that may be major Federal actions significantly affecting the quality of the human environment, and to make changes reflecting current GSA organization structure. These changes affect GSA internal procedures only.

**EFFECTIVE DATE:** October 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Colin Wagner, NEPA Liaison, Environmental Business Strategies, PXE 4046, Public Buildings Service, U.S. General Services Administration, 1800 F Street, N.W., Washington, D.C. 20405 (202–501–2888).

**SUPPLEMENTARY INFORMATION:** This revision updates and supercedes the February 25, 1985, [FR 7648] and December 8, 1995 GSA Order ADM 1095.1E. A draft of the procedures was published for public review and comment on June 26, 1998. Interested persons were asked to submit comments by July 27, 1998. The U.S. Environmental Protection Agency (EPA) requested and was given additional time to submit comments. No other requests for an extended comment period were received. Responses to comments plus other technical changes are described below. Copies of the PBS NEPA Desk Guide are available from GSA (see **FOR FURTHER INFORMATION**, above) or on the Internet at: *http://www.gsa.gov/pbs/pt/call-in/erlsub4.htm.*

### (1) Summary

The revised ADM Order 1095.1F and the PBS NEPA Desk Guide are administrative and procedural improvements intended to enhance GSA's ability to comply with NEPA and related legal authorities and Executive Orders, while also ensuring public involvement in decisionmaking. These improvements result from more than 25 years of agency experience with NEPA. Development of the revised ADM Order 1095.1F and the PBS NEPA Desk Guide was a multi-year process involving GSA National Office and Regional Office personnel who represent the agency's collective technical and managerial expertise in environmental quality and NEPA compliance. Members of the Environmental Quality Advisory Group (EQAG) represented GSA business lines and the 11 GSA regions.

### (2) Comments and Responses

GSA received two comments on the proposed revisions, one from a Federal agency [USEPA] and one from a State agency.

a. USEPA provided no specific comments, stating: ''In general, we find the revised orders and NEPA Desk Guide to be well written, comprehensive, clear and understandable. It serves as a good model for other agencies who may need to develop NEPA guidance specific to their mission.''

GSA appreciates the comment.

b. GSA received a comment from the Wyoming State Geological Survey stating that ''studies involving the identification and evaluation of paleontologic resources'' on GSA property should be considered an automatic categorical exclusion from NEPA.

GSA disagrees with this comment. GSA believes that under certain circumstances evaluation of palentologic resources may involve excavations that have the potential to significantly affect the human environment, and therefore should be subject to more rigorous NEPA review. The NEPA review process is a practical planning tool in which GSA identifies other regulatory compliance issues. While excavations of paleontologic and archaeological resources are specifically governed by other legal authorities (such as the Archaeological Resources Protection Act), the integration of NEPA with other legal authorities is a policy established in the CEQ regulations. 40 CFR 1500.2(c) directs Federal agencies to ''integrate the requirements of NEPA with other planning and environmental review procedures required by law or by

agency practice so that all such procedures run concurrently rather than consecutively.'' By including other planning and environmental reviews within the NEPA process, the process becomes comprehensive and cohesive, and issues may be identified. GSA has added a new Checklist CATEX that specifically addresses excavations and which requires preparation of the CATEX Checklist: 5.4(m): ''Archaeological studies permitted under the Archaeological Resources Protection Act (ARPA) and paleontological studies.''

**(3) Other Changes**

GSA has also identified other paragraphs in the ADM and PBS NEPA Desk Guide that needed to be revised. The more substantive changes include the following:

a. Questions were raised as to why GSA needs to issue the new guidance in the form of an ADM order, a PBS order, and a PBS NEPA Desk Guide. There was substantial duplication between the PBS order and the PBS NEPA Desk Guide. The suggestion was to place the information contained in the PBS order in either the ADM or the PBS NEPA Desk Guide. This change would have no effect on the content or authority of the GSA orders.

This change has been made.

b. The title ''NEPA Center of Expertise (NCE)'' has been changed to ''Regional Environmental Quality Advisor (REQA)''

c. Automatic CATEX 5.3 (a) has been narrowed from ''Issuance of easements, licenses, or outleases for use of space in existing Federal office buildings, where consistent with local planning and zoning, provided Section 106 of the NHPA is complied with where applicable'' to ''Outleases, licenses, and other arrangements for non-federal use of space in existing Federal office buildings, where such use is consistent with local planning and zoning, where Section 106 of the NHPA is complied with where applicable; and there is no evidence of community controversy or unresolved environmental issues.''

d. Automatic CATEX 5.3(m) has been narrowed by adding the following text: ''* * * where there is no evidence of unresolved environmental issues.''

e. One new Automatic CATEX has been added:

5.3(k) ''Other repair and alteration projects where: 1) no toxic or hazardous substances are involved with the project or exist in or on the property where the project takes place; 2) no properties listed on or eligible for the National Register of Historic Places are involved; 3) the building envelope or foot-print will not be increased; 4) there is no evidence of community controversy; and 5) there is no evidence of other unresolved environmental issues.''

f. Checklist CATEX Section 5.4(d) has been changed from ''Transfer of real property to government agencies'' to ''Transfer of real property to Federal, State, and local agencies, and Indian tribes.''

g. Checklist CATEX Section 5.4(h) has been changed from ''Issuance of easements, licenses, or outleases for use of space in Federal facilities other than existing office buildings'' to ''Outleases, licenses, and other arrangements for non-federal use of land or space in facilities other than existing Federal office buildings.''

h. One new Checklist CATEX has been added to Section 5.4 and the section has been renumbered accordingly: 5.4(n) Installation of antennae consistent with FPMPD–242.

i. Additional circumstances which trigger a 30-day public review period for a FONSI before going ahead with the proposed action or deciding to prepare an EIS have been added to Desk Guide Section 6.10.3. The additional circumstances are based on the Council on Environmental Quality's ''Forty Frequently Asked Questions,'' Number 37b [46 FR 18026, March 23, 1981]:

(a) If the proposal is a borderline case, *i.e.,* when there is a reasonable argument for preparation of an EIS;

(b) If it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area;

(c) When there is a scientific or public controversy over the proposal; or

(d) When it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS.

(e) If the proposed action would be located in a floodplain or wetland.

Dated: October 19, 1999.

**David J. Barram,**

*Administrator, General Services Administration.*

## GSA Order

**Subject: Environmental Considerations in Decisionmaking**

1. *Purpose.* This order establishes policy and assigns responsibility for implementing the National Environmental Policy Act (NEPA), its implementing regulations, and related laws, executive orders, and regulations in the decisionmaking processes of the General Services Administration (GSA).

2. *Cancellation.* ADM 1095.1E, dated December 8, 1995, is canceled.

3. *Background.* The National Environmental Policy Act (NEPA) and the Government wide implementing regulations of the Council on Environmental Quality (40 CFR 1500–1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment, and prescribes procedures to be followed in doing so. Other laws, executive orders, and regulations provide related direction. Each Federal agency is required to implement internal procedures to ensure that the requirements of NEPA are met. Existing orders are out of date and do not provide for current requirements.

4. *Nature of revision.* This revision reflects a thorough internal review of GSA's systems for implementing NEPA. It replaces an interim order, ADM 1095.1E, which was adopted to govern GSA's compliance with NEPA while this review took place. This revised order is issued in coordination with an explanatory desk guide to NEPA review, which together provide GSA with an efficient, up-to-date NEPA compliance system that is consistent with principles of accountability, flexibility, and environmental responsibility.

5. *Policy:* In all its decisionmaking, GSA will attend carefully to the National Environmental Policy set forth in Section 101 of NEPA. To the maximum extent practicable, GSA will ensure that its actions protect and where possible improve the quality of the human environment, including the built and sociocultural environments of the nation's urban areas. GSA decisionmakers will use the NEPA review process prescribed in the CEQ regulations as a practical planning tool, and integrate both the NEPA review process and the Section 101 National Environmental Policy into decisionmaking in an efficient, cost-effective manner. The NEPA review process will be initiated at the earliest possible stage in planning any GSA action, and will be carried forward in coordination with other planning activities. Decisionmakers will ensure that they have reviewed and fully understand the environmental impacts of each decision, before making any such decision. All managers responsible for decisionmaking on GSA actions will be accountable for being knowledgeable about, and attendant to, the requirements of NEPA and the National Environmental Policy that these requirements are designed to advance.

6. *Responsibilities.*

6a. *Commission, Public Buildings Service (PBS).*

6.a.(1) The Commissioner acts for the Administrator, GSA, on matters relating to NEPA implementation, and oversees

implementation of this order. This ADM, the NEPA Desk Guide, and related direction governs GSA compliance with NEPA and related legal authorities.

6.b. *NEPA Liaison.*

6.b.(1) Is the principal GSA advisor on NEPA-related requirments, including but not limited to compliance with NEPA and the coordination of NEPA compliance with the requirements of the laws and regulations listed in Appendix 1 of the NEPA Desk Guide.

6.b.(2) Provides expert advise on NEPA-related matters to GSA Heads of Services, Business Lines, and Regional Administrators.

6.b.(3) Provides intra-agency and interagency liaison and coordination on NEPA-related matters on a national basis.

6.b.(4) Provides the periodically updates GSA program guidance, after consultation with the General Counsel, Heads of Services, Business Lines, and Regional Administrators.

6.b.(5) Provides education and training within GSA pertinent to implementation of NEPA and related authorities.

6.b.(6) Coordinates with GSA's Environmental Executive in maintaining a record of GSA's environmental activities, and in advancing the national environmental policy articulated in NEPA and other statues and executive orders.

6.b.(7) Serves as GSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

6.c. *Regional Administrators.*

6.c.(1) Are accountable for execution of GSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

6.c.(2) Serve as the responsible agency official under CEQ regulations with respect to the environmental effects of actions under their jurisdiction.

6.c.(3) Maintain NEPA Regional Environmental Quality Advisors (REQA) within their staffs, augmented as necessary through interagency agreements and contracts, to ensure regional interdisciplinary competence in environmental matters.

6.c.(4) In consultation with the NEPA Liaison, ensure that all regional staff with responsibility for planning, approving, and implementing construction, repair, alteration, site and facility acquisition, real property management, maintenance, and real property disposal receive appropriate training in how to carry out GSA's responsibilities under NEPA and related authorities.

6.d. *GSA Environmental Executive.*

6.d.(1) Serves as GSA's Environmental Executive under Executive Order 12873.

6.d.(2) Coordinates with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responisiblity, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.e. *Heads of Services and Business Lines.*

6.e.(1) Serve as the responsible agency officials under CEQ regulations for actions subject to their approval.

6.e.(2) Ensure accountability for implementation of the policy set forth in this order.

6.e.(3) In consultation with the NEPA Liaison, ensure that staff responsible for supporting the functions of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out GSA's responsibilities.

6.f. *The Office of General Counsel.*

6.f.(1) Is responsible for legal interpretation of NEPA and related authorities, and represents GSA in litigation under such authorities.

6.f.(2) Advises the NEPA Liaison during the development and delivery of guidance and training.

7. *Administrative Guidance.*

7.a. The NEPA Liaison has overall program responsibility for establishing procedures, training, and professional standards, and for maintaining interagency administrative responsibilities and relationships. These functions will be carried out at the working level by a professional NEPA Liaison staff.

7.b. Heads of Services and Business Lines will assist and cooperate with the NEPA Liaison in the development and delivery of training, as well as procedural and program guidance, and act as coordinators for program needs of the Services and Business lines on a national basis.

7.c. Regional Business Lines have responsibility for ensuring that NEPA compliance responsibilities are satisfied, and the policy articulated in paragraph 5 of this order is followed, with respect to their programs and projects. In consultation with the REQA, the Business Lines will utilize interdisciplinary professional expertise in their implementation of NEPA responsibilities.

8. *Implementation of NEPA and Related Authorities.*

8.a. In accordance with applicable regulations and standards, and with program guidance provided by the NEPA Liaison, the responsible agency official shall:

8.a.(1) Ensure that the applicable requirements of NEPA and related authorities are met in a timely manner during planning for any GSA action, in a manner consistent with the policy articulated in paragraph 5 of this order.

8.a.(2) Ensure that mitigation measures established through review of actions under NEPA and related authorities are carried out as part of implementing the actions.

8.a.(3) Ensure that the means by which GSA has met its responsibilities, and the costs involved in doing so, are fully documented.

8.b. All Heads of Service, Business Lines, and Regional Offices will employ the PBS NEPA Desk Guide, issued and periodically updated by the NEPA Liaison, as guidance in carrying out this order.

9. Effective Date. Every effort shall be made to implement the provisions of this order immediately.

[FR Doc. 00–29263 Filed 11–16–00; 8:45 am]

**BILLING CODE 2820–BR–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and State Children's Health Insurance Program for October 1, 2001 through September 30, 2002

**AGENCY:** Office of the Secretary, DHHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2002 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2001 through September 30, 2002. This notice announces the calculated ''Federal Medical Assistance Percentages'' and ''Enhanced Federal Medical Assistance Percentages'' that we will use in determining the amount of Federal matching in State medical assistance (Medicaid), State Children's Health Insurance Program (SCHIP) expenditures, and for the annual reconciliation of contingency funds under Title IV–A. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each

jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. Programs under title XXI began functioning in fiscal year 1998. The percentages in this notice apply to State expenditures for assistance payments, medical services and medical insurance services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The ''Federal medical assistance percentages'' are for Medicaid. These percentages will also be used for the annual reconciliation of any Contingency funds received under the Temporary Assistance for Needy Families program.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3). There is no specific requirement to publish these percentages. We include them in this notice for the convenience of the States.

**EFFECTIVE DATES:** The percentages listed will be effective for each of the four quarter-year periods in the period beginning October 1, 2001 and ending September 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tolbert or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.588–Temporary Assistance for Needy Families; 93.563–Child Support Enforcement; 93.659–Adoption Assistance; 93.778–Medical Assistance Program; 93.767–State Children's Health Insurance Program)

Dated: November 6, 2000.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2001–SEPTEMBER 30, 2002

[Fiscal Year 2002]

| State | Federal medical assistance percentages | Enhanced federal medical assistance percentages |
|---|---|---|
| Alabama | 70.45 | 79.32 |
| Alaska | 53.01 | 67.11 |
| American Samoa* | 50.00 | 65.00 |
| Arizona | 64.98 | 75.49 |
| Arkansas | 72.64 | 80.85 |
| California | 51.40 | 65.98 |
| Colorado | 50.00 | 65.00 |
| Connecticut | 50.00 | 65.00 |
| Delaware | 50.00 | 65.00 |
| District of Columbia** | 70.00 | 79.00 |
| Florida | 56.43 | 69.50 |
| Georgia | 59.00 | 71.30 |
| Guam* | 50.00 | 65.00 |
| Hawaii | 56.34 | 69.44 |
| Idaho | 71.02 | 79.71 |
| Illinois | 50.00 | 65.00 |
| Indiana | 62.04 | 73.43 |
| Iowa | 62.86 | 74.00 |
| Kansas | 60.20 | 72.14 |
| Kentucky | 69.94 | 78.96 |
| Louisiana | 70.30 | 79.21 |
| Maine | 66.58 | 76.61 |
| Maryland | 50.00 | 65.00 |
| Massachusetts | 50.00 | 65.00 |
| Michigan | 56.36 | 69.45 |
| Minnesota | 50.00 | 65.00 |
| Mississippi | 76.09 | 83.26 |
| Missouri | 61.06 | 72.74 |
| Montana | 72.83 | 80.98 |
| Nebraska | 59.55 | 71.69 |
| Nevada | 50.00 | 65.00 |
| New Hampshire | 50.00 | 65.00 |
| New Jersey | 50.00 | 65.00 |
| New Mexico | 73.04 | 81.13 |
| New York | 50.00 | 65.00 |
| North Carolina | 61.46 | 73.02 |
| North Dakota | 69.87 | 78.91 |
| Northern Mariana Islands* | 50.00 | 65.00 |
| Ohio | 58.78 | 71.15 |
| Oklahoma | 70.43 | 79.30 |
| Oregon | 59.20 | 71.44 |
| Pennsylvania | 54.65 | 68.26 |
| Puerto Rico* | 50.00 | 65.00 |
| Rhode Island | 52.45 | 66.72 |
| South Carolina | 69.34 | 78.54 |
| South Dakota | 65.93 | 76.15 |
| Tennessee | 63.64 | 74.55 |
| Texas | 60.17 | 72.12 |
| Utah | 70.00 | 79.00 |
| Vermont | 63.06 | 74.14 |
| Virgin Islands* | 50.00 | 65.00 |
| Virginia | 51.45 | 66.02 |
| Washington | 50.37 | 65.26 |
| West Virginia | 75.27 | 82.69 |
| Wisconsin | 58.57 | 71.00 |
| Wyoming | 61.97 | 73.38 |

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

**The value in the table was set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for DC is 50.00.

[FR Doc. 00–29112 Filed 11–16–00; 8:45 am]

BILLING CODE 4154–05–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Child Care and Development Fund Plan for States/Territories.

*OMB No.:* 0970–0114.

*Description:* The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the child care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (P.L. 101–508), 42 U.S.C. 9858. The implementing regulations for the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan, provides ACF and the public with a description of, and assurance about, the State's child care program. The ACF–118 is approved through October 31, 2001 making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2001 Plan Period. However, in July 2001, States and Territories will be required to submit their FY 2002–2003 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections

and modifications. The Tribal Plan (ACF–118A) is not affected by this notice.

*Respondents:* State and Territorial Lead Agencies.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–118 | 56 | .5 | 162.57 | 4,552 |

*Estimated Total Annual Burden Hours:*

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*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: November 8, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–29463 Filed 11–16–00; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Community-Based Abstinence Education Project Grants

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that approximately $17 million in fiscal year (FY) 2001 funds is available for making competitive grants to implement strategies to provide abstinence education to adolescents, ages 12 through 18, in communities across the Nation. Eligibility is open to public and private entities which clearly and consistently focus on a designated definition of ''abstinence education'' and agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting. All awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)). These grants (CFDA #93.110NO) will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Approximately $1.5 million will be available for up to 15–20 one-year planning grants, with awards ranging from $75,000 to $100,000, and approximately $15.5 million will be available for up to 25–50 three-year implementation grants, with annual awards ranging from $250,000 to $1 million, depending on continued availability of funds. Projects may be located in any State, the District of Columbia, and United States territories, commonwealths, and possessions. Funds for Community-Based Abstinence Education project grants are appropriated by Public Law 106–246.

This announcement will appear in the **Federal Register** and on the HRSA Home Page at: *http://www.hrsa.dhhs.gov/*. **Federal Register** notices are found by following instructions at: *http://www.access.gpo.gov/su docs/aces/aces140.html.*

**DATES:** Entities which intend to submit an application for this grant program are expected to notify MCHB's Division of State and Community Health by December 1, 2000. The deadline for receipt of applications is February 2, 2001. Applications will be considered ''on time'' if they are either received on or before the deadline date or postmarked on or before the deadline date. The projected award date is April 27, 2001.

**ADDRESSES:** To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning November 15, 2000, or register on-line at: *http://www.hrsa.dhhs.gov/*, or by accessing *http://www.hrsa.gov/g order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities which provide assistance. The CFDA Number for the Community-Based Abstinence Education project grant program is: #93.110NO. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, telephone: 1877–HRSA–123 (477–2123), E-mail: *hrsagac@hrsa.gov.*

This application guidance and the required form for the Community-Based Abstinence Education project grant program may be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB HomePage at *http://www.mchb.hrsa.gov/*. Please contact Joni Johns at 301–443–2088 or *jjohns@hrsa.gov/*, if you need technical assistance in accessing the MCHB Home Page via the Internet.

*Letter of Intent:* To assist MCHB in planning for an orderly review of applications, entities which intend to submit an application for this grant program are invited to notify MCHB's Division of State and Community Health in one of three ways: telephone, 301–443–2204; fax, 301–443–9354; or mail, MCHB, HRSA; Division of State and Community Health; Parklawn Building, Room 18–31; 5600 Fishers Lane; Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Michele Lawler, 301–443–2204 (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Dorothy Kelley, 301–443–3288 (for grants policy, budgetary, and business questions).

**SUPPLEMENTARY INFORMATION:**

**Program Background and Objectives**

Title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000 (Public Law 106–113) included an advance appropriation for FY 2001 of $20 million for the Adolescent Family Life (AFL) program, authorized under Title XX of the Public Health Service Act, to support prevention-oriented abstinence education project grants.

Title II, chapter 4, of Public Law 106–246, the ''Military Construction Appropriations Act of 2001,'' rescinded this advance $20 million appropriation for the AFL program. Instead, it appropriated $20 million for the MCH Block Grant's Federal Set-Aside Program—which supports Special Projects of Regional and National Significance (SPRANS)—to support community-based Abstinence Education project grants for FY 2001. The law provides that funds be used:

* * * for making competitive grants to provide abstinence education (as defined in section 510(b)(2) of such Act) to adolescents * * * Provided further, That such grants shall be made only to public and private entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which the abstinence education was provided * * *.''

The pending FY 2001 Labor-HHS-Education Appropriations Act (H. R. 4577) includes an advance appropriation, under SPRANS, of $30 million for the Community-Based Abstinence Education grant program for FY 2002. The House report accompanying the bill (H. Rpt. 106–645) elaborates upon rules for projects funded under the program:

The Committee supports abstinence education for adolescents, ages 12 through 18, and supports expansion of efforts to present an abstinence-only message to America's youth. The preliminary results from these program[s] in states such as Oklahoma are promising. It is important, however, to ensure that America's youth do not receive mixed message[s], or medically inaccurate information. The legislation directs that abstinence messages given to a group of youth[s] by a grantee must not be diluted by any instructor or materials from the same grantee. Nothing in the legislation is intended to prevent these adolescents from seeking health information or services. Nothing shall preclude entities who are teaching these abstinence-only classes and who have a public health mandate from discussing other forms of sexual conduct or providing services, as long as this is conducted in a different setting than where and when the abstinence-only course is being conducted. In allocating grant funds, priority should be given to those organizations which have a strong record of support of abstinence education as defined in sections (a) through (h) of title 5, section 510(b)(2) of the Social Security Act.

In the laws cited above, Congress also earmarked a portion of the total amounts appropriated to support comprehensive evaluations, including longitudinal evaluations, of abstinence education. These evaluation activities are beyond the purview of this announcement.

Abstinence-only education programs are one way to educate young people and create an environment within communities that supports teen decisions to postpone sexual activity. In 1999, 49.9 percent of high school students reported having had sexual intercourse and 36.3 percent reported having had sexual intercourse within the previous three months. (CDC, MMWR, June 9, 2000). There are some indications that early sexual intercourse by adolescents can have negative effects on social and psychological development. Research shows that teen pregnancy is linked to a list of risk factors similar to those for other problem behaviors of adolescence, such as alcohol and drug use, violence, delinquency, and school drop-out. Teen parenting is associated with the lack of high school completion and the initiation of a cycle of poverty for mothers. The Department of Health and Human Services established the reduction of teen pregnancies as a priority goal in its 1997 strategic plan. Overall, the teen birth rate declined by 18 percent from 1991 to 1998, with all States reporting a decline in the birth rate of teens 15–19 years of age between 1991 and 1998. (CDC, NCHS, Vital Statistics Reports, March 28, 2000).

In addition to the rules Congress has established for the program, SPRANS Community-Based Abstinence Education project grants are subject to regulations, at 42 CFR Part 51a, that are applicable to all SPRANS projects. The Federal SPRANS authority was enacted as part of the MCH Block Grant under Section 501(a)(2) of the Social Security Act, by the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Public Law 97–35). In general, the set-aside in section 502(a) permits the Secretary to retain 15 percent of the total MCH Block Grant appropriation each fiscal year to support discretionary grants in certain categories: MCH Research; MCH Training; Genetic Disease Testing, Counseling and Information Dissemination; Newborn Screening; Hemophilia Diagnostic and Treatment Centers; and Other Special Projects to Improve Maternal and Child Health. No percentage of the available funds is specified by law for any particular category of SPRANS grant. H. R. 4577 adds Community-Based Abstinence Education as a SPRANS project category. However, the funds made available for Abstinence Education grants under H. R. 4577 are specified or ''earmarked'' only for this purpose; they will not be counted toward compliance with the statutorily-determined 15 percent SPRANS set-aside amount.

The projects funded under this announcement are also intended to complement the existing categorical program of Grants to States for Abstinence Education, authorized under section 510(b)(2) of Title V by Public Law 104–193, the ''Personal Responsibility and Work Opportunity Act of 1996.'' The purpose of that block grant program is to enable States to support abstinence education, and, at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups most likely to bear children out-of-wedlock. The law provides for a mandatory annual appropriation of $50 million for FY 1998 through FY 2002. Grants are awarded to each State based on a statutory formula determined by the proportion that the number of low income children in the State bears to the total number of low income children in all States. Grant applications are accepted only from the State health agency responsible for the administration (or supervision of the administration) of the Title V MCH Block Grant, with funds disbursed at the discretion of the Governor unless otherwise established under State law or judicial precedent. There is a required match of three non-Federal dollars for every four Federal dollars awarded. If a State chooses not to apply for a grant, the State's allocation is returned to the Treasury and is not available for redistribution among remaining States.

Consistent with other SPRANS grant programs, the Bureau encourages coordination and collaboration between the State agencies administering a Section 510 Abstinence Education grant and community-based organizations applying for a SPRANS Community-Based Abstinence Education project grant. Such coordination and collaboration is considered beneficial in promoting complementary efforts

between State and community agencies and advancing maternal and child health.

Projects funded through the SPRANS Community-Based Abstinence Education grant program share a common definition of ''abstinence education'' with the Section 510-funded State programs. For purposes of both programs (as well as abstinence education programs funded under the Title XX AFL program), the term ''abstinence education'' means ''an educational or motivational program which—

(A) Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) Teaches the importance of attaining self-sufficiency before engaging in sexual activity.''

Curricula developed or selected for implementation in the SPRANS Community-Based Abstinence Education grants program are expected to be responsive to the eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of that definition.

**Authorization**

Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2), and Public Law 106–246.

**Purpose**

The purpose of the SPRANS Community-Based Abstinence Education grant program is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18, in communities across the country. This program funds the planning and implementation of community-based, abstinence-only educational interventions designed to reduce the rate of births to teenagers, the proportion of adolescents who have engaged in sexual intercourse, and the proportion of teenagers who have engaged in risk behaviors, such as tobacco, alcohol, and drug use.

Specific objectives for the SPRANS Community-Based Abstinence Education planning and implementation grants are to:

- Support programmatic efforts that foster the development of abstinence-only education for adolescents, ages 12 through 18, in communities across the country.
- Develop and implement abstinence-only programs that target the prevention of teenage pregnancy and premature sexual activity.
- Develop abstinence education approaches that are culturally sensitive and age-appropriate to meet the needs of a diverse audience of adolescents, ages 12 through 18.
- Implement curriculum-based community education programs that promote abstinence decisions to adolescents, ages 12 through 18.

The SPRANS Community-Based Abstinence Education grant program project activities are expected to complement and enhance State grantees' required efforts to achieve performance goals and objectives established for the existing Title V ''Section 510'' projects in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Pub. L. 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. SPRANS Community-Based Abstinence Education program grantees will be required to report annually on the four national performance measures presented in Figure 1.

FIGURE 1.—SPRANS COMMUNITY-BASED ABSTINENCE EDUCATION GRANT PROGRAM

[National Performance Measures]

| | |
|---|---|
| #1 ..... | Proportion of program participants who successfully complete or remain enrolled in an abstinence-only education program. |
| #2 ..... | Proportion of program participants who have engaged in sexual intercourse. |

FIGURE 1.—SPRANS COMMUNITY-BASED ABSTINENCE EDUCATION GRANT PROGRAM—Continued

[National Performance Measures]

| | |
|---|---|
| #3 ..... | Proportion of program participants who report a reduction in risk behaviors, such as tobacco, alcohol, and drug use. |
| #4 ..... | The rate of births to female program participants. |

In addition, each SPRANS Abstinence Education grantee will be required to submit to MCHB an annual report on its activities, including a narrative discussion of the project's progress toward achieving the goals, objectives and performance measures, an unduplicated count of clients served, total number of client encounters, and a list of the communities served.

Applicants for SPRANS Community-Based Abstinence Education implementation grants must submit three-year targets for each national performance measure. Applicants for the planning grants are not required to submit performance measure targets for the one-year planning period. Further information on performance measurement for this program and instructions regarding performance measurement-related application requirements are included in the Program Guidance.

OMB approval for the data reporting will be sought, as required under the Paperwork Reduction Act of 1995.

Curricula developed or selected for implementation in the SPRANS Community-Based Abstinence Education grants program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any element of that definition.

Applicants may choose, but are not required, to have their selected curricula reviewed by the State Agency Director(s) of the State or States that will be affected by the proposed project. MCHB encourages consultation and collaboration between grantees and the State agencies throughout the life of the project.

Applicants should be aware that grantees may not teach or promote religion in their SPRANS Community-Based Abstinence Education projects. Non-profit organizations and other community-based organizations, including faith-based organizations, are eligible to apply (see Eligibility, below), but must provide assurance that they will respect this requirement. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Background information on this issue is available via the Internet at: *www.mchb.hrsa.gov.*

In addition, this program is subject to Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1861–62), which prohibits discrimination based on sex in programs which receive Federal financial assistance.

**Eligibility**

Under SPRANS project grant regulations at 42 CFR Part 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)), is eligible to apply for grants covered by this announcement. Projects must clearly and consistently focus on the designated definition of ''abstinence education'' and applicants must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Applicants proposing to provide abstinence-only education and who have a public health mandate, such as State or local health departments, community health centers or other community-based clinics, must provide assurance that any discussion of other forms of sexual conduct or provision of services is conducted in a setting different from where and when the abstinence-only course is being conducted.

**Funding Level/Project Period**

Two types of grants will be awarded in FY 2001 under this program—one-year planning grants, with awards ranging from $50,000 to $75,000; and three-year implementation grants, with awards ranging from $250,000 to $1,000,000 per year. Planning grant funding will support program planning, training and community assessment activities. Implementation grant funding will support the development and implementation of three-year projects.

Approximately $1.5 million will be awarded to support 15 to 20 planning grants; about $15.5 million will be awarded to support 25 to 50 implementation grants. Some adjustment in funding amounts between categories may be made, depending on the number and quality of applications received.

The project period consists of one or more budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities.

**Funding Priorities**

Priority for funding will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents. An approved proposal that reflects this priority will receive a 5-point favorable adjustment in the priority score, before funding decisions are made.

**Review Criteria**

The following are generic review criteria applicable to all MCHB programs:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials;

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

The final review criteria used to review and rank applications for the SPRANS Community-Based Abstinence Education grant program are included in the application kit. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged.

**Public Health System Reporting Requirements**

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 525).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

**Executive Order 12372**

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: November 13, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–29425 Filed 11–16–00; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. 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 programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

*Name of Committee:* Board of Scientific Counselors, National Cancer Institute Subcommittee A—Clinical Sciences and Epidemiology.

*Date:* November 27–28, 2000.

*Closed:* November 27, 2000, 7:00 p.m. to 9:15 p.m.

*Agenda:* Discussion of personnel and programmatic issues and review and evaluate individual Principal Investigators.

*Place:* Holiday Inn—Washington/Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Closed:* November 28, 2000, 8:30 a.m. to 5:30 p.m.

*Agenda:* Discussion of personnel and programmatic issues and review and evaluate individual Principal Investigators.

*Place:* National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Abby Sandler, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7019, Rockville, MD 20852, (301) 496–7628.

(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: November 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29430 Filed 11–16–00; 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 Prevention Research Small Grant Program.

*Date:* December 5–6, 2000.

*Time:* 6 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*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.

(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: November 7, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29435 Filed 11–16–00; 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:* November 16–17, 2000.

*Time:* 4:00 p.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*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, Bethesda, MD 20892, (301) 435–6884.

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. 93.209, 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: November 7, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29427 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* December 13–14, 2000.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

*Contact Person:* Richard D. Crosland, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29429 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel.

*Date:* November 20, 2000.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* David I. Sommers, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

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 Mental Health Special Emphasis Panel.

*Date:* December 1, 2000.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Mary Sue Krause, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29431 Filed 11–16–00; 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:* November 8, 2000.

*Time:* 2 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 8120 Wisconsin Avenue, Vesailles IV Room, Bethesda, MD 20814.

*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, Bethesda, MD 20892, (301) 435–6884.

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. 93.209, 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: November 7, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29434 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel.

*Date:* November 17, 2000.

*Time:* 9 am to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Rebecca H. Hackett, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771, hackettr@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 92.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 7, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29436 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel; Protein Information Resource for the Next Millennium.

*Date:* December 5–6, 2000.

*Time:* December 5, 2000, 7:30 p.m. to 9:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Time:* December 6, 2000, 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Milton Corn, MD, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Center, Suite 301, 6706 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29433 Filed 11–16–00; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 13, 2000.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lee S. Mann, PhD., JD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29428 Filed 11–16–00; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 8, 2000.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michele C. Hindi-Alexander, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7848, Bethesda, MD 20892, (301) 435–3554.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29432 Filed 11–16–00; 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:* November 14, 2000.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892; (Telephone Conference Call).

*Contact Person:* Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892; (301) 435–1169.

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:* November 14, 2000.

*Time:* 2 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892; (Telephone Conference Call).

*Contact Person:* Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701

Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892; (301) 435–1742.

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:* November 16–17 2000.
*Time:* 8:30 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Angela M. Pattatucci-Aragon, 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 Special Emphasis Panel.
*Date:* November 16, 2000.
*Time:* 1:30 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

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:* November 17, 2000.
*Time:* 1 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Angela M. Pattatucci-Aragon, 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 Special Emphasis Panel.
*Date:* November 20, 2000.
*Time:* 4 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Michele C. Hindi-Alexander, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7848, Bethesda, MD 20892, (301) 435–3554.

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:* November 22, 2000.
*Time:* 1 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Yvette M. Davis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

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:* November 27, 2000.
*Time:* 3 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892; (301) 435–1718.

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:* November 27, 2000.
*Time:* 12 p.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892; (301) 435–1507.

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:* November 28, 2000.
*Time:* 11 a.m. to 12:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892; (301) 435–1147.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 28, 2000.
*Time:* 1 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892; (301) 435–1717.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 28, 2000.
*Time:* 1 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892; 301–435–1220, zimmerng@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 28, 2000.
*Time:* 1 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892; (301) 435–1147.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 28, 2000.
*Time:* 2 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892; (301) 435–1024.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 29, 2000.
*Time:* 1 p.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892; 301–435–1220, zimmerng@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 29, 2000.
*Time:* 2 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892; (301) 435–1024, rodewalr@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 30–December 1, 2000.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Inn, 1310 Wisconsin Ave., NW., Washington, DC 20007.
*Contact Person:* Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892; (301) 435–1153.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 30, 2000.
*Time:* 12 p.m. to 1 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892; (301) 435–1261.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–29437 Filed 11–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4557–N–46]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 9, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs, Assistance Programs.*

[FR Doc. 00–29300 Filed 11–16–00; 8:45 am]

BILLING CODE 4210–29–M

## INTER-AMERICAN FOUNDATION

### Sunshine Act Meeting

**TIME AND DATE:** November 30, 2000, 10 a.m.–3:30 p.m.

**PLACE:** 901 N. Stuart Street, Tenth Floor, Arlington, VA 22203.

**STATUS:** Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4(f).

**MATTERS TO BE CONSIDERED:**

- Approval of the Minutes of the May 23, 2000, Meeting of the Board of Directors
- Discussion of Fiscal Year 2001 Programs and Operations
- Report on Congressional Activities
- Closed Session To Discuss Personnel Issues. Closed session as provided in 22 CFR Part 1004.4 (f).

**CONTACT PERSON FOR MORE INFORMATION:** Carolyn Karr, General Counsel, (703) 306–4350.

Dated: November 14, 2000.

**Carolyn Karr,**

*General Counsel.*

[FR Doc. 00–29665 Filed 11–15–00; 3:44 pm]

BILLING CODE 7025–01–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Bureau of Reclamation

**[FES 00–48]**

### Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report

**AGENCIES:** Fish and Wildlife Service, Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of Final Environmental Impact Statement for the proposed Trinity River Mainstem Fishery Restoration.

**SUMMARY:** This notice announces the availability of a joint final Environmental Impact Statement/ Environmental Impact Report (FEIS/ EIR) for the Trinity River Mainstem Fishery Restoration. This notice is the second notice of availability and follows the first notice of availability and the rescission of that notice which appeared in the **Federal Register** on October 20, 2000, and October 25, 2000, respectively. The U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, Hoopa Valley Tribe, and Trinity County prepared a FEIS/EIR to assist the Secretary of the Interior in developing recommendations for permanent instream fishery flow requirements, habitat restoration projects, and operating criteria and procedures for the Trinity River Division of the Central Valley Project, California, necessary for the restoration and maintenance of natural production of anadromous fish in the Trinity River. Such recommendations are required by: the January 14, 1981, Secretarial Decision that initiated the Trinity River Flow Evaluation; the Trinity River Basin Fish and Wildlife Management Act (Public Law 98–541); and the Central Valley Project Improvement Act (Public Law 102–575).

**DATES:** A Record of Decision and permit decision will occur no sooner than thirty (30) days after the publication of the Environmental Protection Agency's notice of availability.

**ADDRESSES:** Copies of the FEIS/EIR will be available on compact disc which, along with a summary, can be obtained by contacting the Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. The documents are also available for review at the following government offices and libraries:

**Government Offices**

Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201;
Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, California 95825, 916–414–6464;
Trinity County Planning Department, 303 Trinity Lakes Blvd, Weaverville, CA 96093 (530) 623–1351;
Trinity County Natural Resources Division, 98A Clinic Ave., Hayfork, CA 96041, (530) 628–5949.

**Libraries**

Alameda Free Library, 2264 Santa Clara Avenue, Alameda, California 94501–4506, (510) 748–4669; Beale Memorial Library, 701 Truxtun Ave, Bakersfield, California, 93301, (661) 868–0700; Cesar Chaves Central Library, 605 N. El Dorado St, Stockton, California, (209) 937–8415; California State Library, Information and Reference Center, 914 Capitol Mall, Room 301, Sacramento, California 95814, (916) 654–0261; Colusa County Free Library, 738 Market Street, Colusa, California 95932–2398, (530) 458–7671; Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, California 94523–4497, (510) 646–6423; Coos Bay Public Library, 525 W. Anderson Ave., Coos Bay, Oregon, 97420, (541) 269–1101; Del Norte County Library District, 190 Price Mall, Crescent City, California 95531–4395, (707) 464–9793; Fresno County Library, Central Branch, 2420 Mariposa St., Fresno, California, (559) 488–3195; Humboldt County Library, 1313 Third Street, Eureka, California 95501–1088, (707) 269–1900; Humboldt State University Library, Humboldt State University, Arcata, California 95521, (707) 826–4939; Lake County Library, 1425 N. High Street, Lakeport, California 95453–3800, (707) 263–8816; Los Angeles Public Library, 630 W. Fifth Street, Los Angeles, California, 9007–12097, (213) 228–7515; Marin County Free Library, 3501 Civic Center Drive, San Rafael, California 94903–4188, (415) 499–6051; Mendocino County Library-Ft. Bragg, 499 E Laurel St., Fort Bragg, California, 95437, (707) 964–2020; Mendocino County Library-Ukiah, 105 N. Main Street, Ukiah, California 95482–4482, (707) 463–4491; Menlo Park Public Library, 800 Alma Street, Menlo Park, California 94025–3460, (650) 858–3460; Merced County Library, 2222 M St., Merced, California, 95340, (209) 385–7434; Modesto Jr. College Library, 425 College Ave, Modesto, California, 95350, (209) 575–6498; Monterey Public Library, 625 Pacific Street, Monterey, California, 93940, (831) 646–3932; Sacramento Public Library, 828 I Street, Sacramento, California 95814–2589, (916) 264–2770; San Francisco Public Library, 100 Larkin Street, San Francisco, California 94102–4796, (415) 557–4400; San Jose Public Library, 180 W. San Carlos Street, San Jose, California 95113–2096, (408) 277–4822; Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060–3873, (408) 429–3532; Shasta County Library, 1855 Shasta Street, Redding, California 96001–0460, (530) 225–5769; Siskiyou County Free Library, 719 Fourth Street, Yreka, California 96097–3381, (530) 842–8175; Sonoma County Library, Third and E Streets, Santa Rosa, California 95404–4400, (707) 545–0831; Tehama County Library, 645 Madison Street, Red Bluff, California 96080–3383, (530) 527–0607; Trinity County Free Library, 211 N. Main Street, Weaverville, California 96093–1226, (530) 623–1373; Willows Public Library, 201 N. Lassen St., Willows, California, 95988, 530–934–5156; Central Library, 801 SW. 10th Avenue, Portland, Oregon 97205, (503) 248–5123; and National Clearinghouse Library, 624 Ninth Street, NW, 600, Washington, DC 20425, (202) 376–8110.

The FEIS/EIR will be available at the Fish and Wildlife Service website at http://www.ccfwo.r1.fws.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. MaryEllen Mueller, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2606, Sacramento, CA 95825 (916) 414–6464 or Jay Glase, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521 (707) 822–7201.

**SUPPLEMENTARY INFORMATION:** Construction of the Trinity River Division (TRD) of the Central Valley Project (CVP) was completed in 1963. The primary function of the TRD is to store Trinity River water for regulated diversion to the Central Valley of California for agricultural, municipal, and industrial uses. Construction and operation of the TRD resulted in the diversion of up to 90 percent of the average annual discharge in the Trinity River at Lewiston, and blocked access to 109 miles of salmon and steelhead spawning and rearing habitat. Reduced river flows, combined with excessive watershed erosion and encroachment of the river channel by riparian vegetation, caused major changes in the channel morphology resulting in the simplification and degradation of the remaining salmon and steelhead habitat of the Trinity River below the Lewiston Dam. This, in turn, resulted in rapid declines of salmon and steelhead populations following completion of the TRD.

In response to declining fisheries and degraded habitat conditions, the Secretary of the Interior (Secretary) decided in 1981 to increase flows in the Trinity River ranging from 140,000 acre-feet to 340,000 acre-feet annually, with reductions in dry and critically dry years. In addition, the Fish and Wildlife Service was directed to undertake a Flow Evaluation Study to assess fish habitat at various flows, summarize the effectiveness of other instream and watershed restoration activities, and recommend appropriate flows and other measures necessary to better maintain favorable habitat conditions. The Flow Evaluation Study began in October 1984 and was completed in June 1999. In October 1984, the Trinity River Basin Fish and Wildlife Management Act (Management Act) (Public Law 98–541) was enacted by Congress with the goal of restoring fish and wildlife populations to pre-TRD levels. The Act provided funding for construction, operation, and maintenance of the 11-item action plan developed by the Trinity River Task Force in 1982. In 1992, the Central Valley Project Improvement Act (CVPIA) (Public Law 102–575) was passed. Section 3406(b)(23) of the CVPIA provides, through the TRD, an instream release of not less than 340,000 acre-feet of water into the Trinity River to meet Federal trust responsibilities to protect fishery resources of the Hoopa Valley Tribe and to meet the fishery restoration goals of the Management Act. The recommendations for mainstem Trinity River fishery restoration will be developed after appropriate consultations with Federal, State, Tribal, local agencies, and affected interests, and after completion the Flow Evaluation Study. To restore the natural production of anadromous fish in the Trinity River in accordance with the 1981 Secretarial Decision, the Management Act, and the CVPIA, the FEIS/EIR analyzes the impacts of:

(1) Increased instream releases into the Trinity River to provide anadromous fish habitat and restore fluvial processes,

(2) Implementation of a channel rehabilitation program,

(3) Implementation of a spawning gravel supplementation program,

(4) Implementation of a watershed rehabilitation program, and

(5) Implementation of an Adaptive Environmental Assessment and Management Program.

On October 19, 1999, the Service published a notice in the **Federal Register** announcing the availability of the draft EIS/EIR and the commencement of the public comment period in the **Federal Register** (64 FR 56364). The comment period was originally scheduled to end on December 8, 1999. However, on December 2, 1999 the Service extended the period until December 20, 1999 (64 FR 67584). On December 27, 1999 the Service published a notice in the **Federal Register**, which reopened the public comment period until January 20, 2000 (64 FR 72357). In total, the lead agencies received written comments from 6445 people and organizations (1009 letters and 5436 preprinted postcards). The primary concerns

expressed in many of the comments related to fishery resource analyses, power generation impacts analyses, mechanical modifications to riverine habitat and the amount of river flow proposed for restoration efforts. A list of the commenters and the response of the agencies to the comments is presented in the FEIS/EIR.

The FEIS/EIR is intended to accomplish the following:

(1) Inform the public of the proposed action and alternatives;

(2) Address public comments received during the scoping and comment periods;

(3) Disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and

(4) Indicate any irreversible commitment of resources that would result from implementation of the proposed action.

This notice is provided pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500, 1508), and the California Environmental Quality Act of 1970, as amended.

The Technical Appendixes (TA) for this FEIS/EIR will be made available upon request from the U.S. Fish and Wildlife Service, Arcata Office, 1655 Heindon Road, Arcata, CA 95521; (707) 822–7201. Documents cited in the FEIS/EIR and its supporting TAs will be available for viewing in Sacramento (U.S. Fish and Wildlife Service, 2800 Cottage Way, 946–414–6464), Arcata (U.S. Fish and Wildlife Service 1655 Heindon Road; 707–822–7201), and Weaverville (Trinity County Library, 211 N. Main Street, Weaverville, California 96093, 530-623–1373).

(Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations 40 CFR 1503.1)

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 00–29316 Filed 11–16–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–690–00–5101–01–B109; CACA–CACA–40467]**

### Proposed Cadiz Groundwater Storage Dry-Year Supply Program, Pipeline Right of Way and Plan Amendment

**AGENCY:** Bureau of Land Management, Department of the Interior, Needles Field Office, Desert District, California.

**ACTION:** Notice of Public Meeting on the Supplemental Draft Environmental Impact Statement.

**SUMMARY:** A public meeting on the Supplement to the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Cadiz Groundwater Storage Dry-Year Supply Program is scheduled for November 29, 2000 at 7:00 p.m. in the Twentynine Palms City Hall, 6132 Adobe Road, Twentynine Palms, CA. The Supplement was prepared in response to comments about groundwater resources and related air quality issues. It provides more information and presents a Groundwater Monitoring and Management Plan (Plan) that is part of the proposed project. The Plan would govern water storage and extraction operations, including the amount of indigenous groundwater that may be extracted over the project's 50-year life. Metropolitan Water District (MWD) and the Bureau of Land Management jointly prepared the Supplement, with the National Park Service and the U.S. Geological Survey as cooperating agencies.

The 45-day public review period for the Supplement ends December 4, 2000. Copies may be reviewed at Metropolitan's headquarters in Los Angeles, BLM offices in Riverside and Needles, the Norman Feldhyme Library in San Bernardino, and the Needles, Twentynine Palms and Barstow Branch Libraries. Written comments may be submitted to Mr. Jack Safely, MWD, PO Box 54153, Los Angeles, CA 90054–0153 or Mr. James Williams, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

**DATES:** Public Meeting November 29, 2000.

**ADDRESSES:** Twentynine Palms City Hall, 6132 Adobe Road, Twentynine Palm, CA.

**TIME:** 7:00 p.m.

**FOR ADDITIONAL INFORMATION CONTACT:** Further information regarding the project may be obtained from Mr. Jack Safely of MWD at (213) 217–6981 or James Williams of BLM at (909) 697–5390.

Dated: November 13, 2000.

**Alan Stein,**

*Acting District Manager.*

[FR Doc. 00–29456 Filed 11–16–00; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–920–00–1310–FI–P; MTM 89255]**

### Notice of Proposed Reinstatement of Terminated Oil And Gas Lease

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice.

**SUMMARY:** Under Pub. L. 97–451, the lessee timely filed a petition for reinstatement of oil and gas lease MTM 89255, Sweet Grass County, Montana . The lessee paid the required rental accruing from the date of termination.

We haven't issued any leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $5 per acre and 16⅔ percent respectively. The lessee paid the $500 administration fee for the reinstatement of the lease and $125 cost for publishing this Notice.

The lessee has met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5 per acre;
- The increased royalty of 16⅔ percent.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: November 3, 2000.

**Karen L. Johnson,**

*Chief, Fluids Adjudication Section.*

[FR Doc. 00–29479 Filed 11–16–00; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–957–00–1420–BJ: G01–0033]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 31 S., R. 15 W., accepted September 22, 2000

T. 11 S., R. 21 E., accepted October 20, 2000

*Washington*

T. 27 S., R. 34 E., accepted February 4, 1999

T. 22 S., R. 11 W., accepted October 5, 2000

T. 33 S., R. 17 E., accepted October 20, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: October 31, 2000.

**Robert D. DeViney, Jr.,**

*Branch of Realty and Records Services.*

[FR Doc. 00–29480 Filed 11–16–00; 8:45 am]

BILLING CODE 4310–33–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–891 (Preliminary)]**

## Foundry Coke From China

### Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of foundry coke, provided for in heading 2704.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

### Background

On September 20, 2000, a petition was filed with the Commission and the Department of Commerce by ABC Coke, Birmingham, AL; Citizens Gas and Coke, Indianapolis, IN; Erie Coke, Erie, PA; Tonawanda Coke, Tonawanda, NY; and the United Steelworkers of America, AFL–CIO, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of foundry coke from China. Accordingly, effective September 20, 2000, the Commission instituted antidumping duty investigation No. 731–TA–891 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 27, 2000 (65 FR 58103). The conference was held in Washington, DC, on October 11, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 6, 2000. The views of the Commission are contained in USITC Publication 3365 (November 2000), entitled Foundry Coke from China: Investigation No. 731–TA–891 (Preliminary).

Issued: November 9, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–29410 Filed 11–16–00; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary)]**

## Honey From Argentina and China

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The United States International Trade Commission also determines, pursuant

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR § 207.2(f)).

to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina of honey that are alleged to be subsidized by the Government of Argentina.

**Commencement of Final Phase Investigation**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Background**

On September 29, 2000, a petition was filed with the Commission and the Department of Commerce by the American Honey Producers Association (AHPA), Bruce, South Dakota, and the Sioux Honey Association (SHA), Sioux City, Iowa, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of honey from Argentina and China and by reason of subsidized imports of honey from Argentina. Accordingly, effective September 29, 2000, the Commission instituted countervailing duty investigation No. 701–TA–402 (Preliminary) and antidumping duty investigations No. 731–TA–892–893 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 6, 2000 (65 FR 59871, October 6, 2000). The conference was held in Washington, DC, on October 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2000. The views of the Commission are contained in USITC Publication 3369 (November 2000) entitled Honey from Argentina and China: Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary).

Issued: November 13, 2000.
By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–29513 Filed 11–16–00; 8:45 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA # 201F]**

### Controlled Substances: 2000 Aggregate Production Quota

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of the revised 2000 aggregate production quota for marihuana.

**SUMMARY:** This notice establishes a revised 2000 aggregate production quota for marihuana, a Schedule I controlled substance in the Controlled Substances Act (CSA).

**EFFECTIVE DATE:** November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On September 18, 2000, notice of a proposed revision to the 2000 aggregate production quota for marihuana was published in the **Federal Register** (65 FR 56328). All interested persons were invited to comment on or object to this proposed aggregate production quota on or before October 3, 2000.

The DEA did not receive any comments on the proposed revision. As such, the DEA has determined that the proposed 2000 aggregate production quota for marihuana is sufficient for the estimated scientific, research and development requirements.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders the following revision to the 2000 aggregate production quota for the listed controlled substance, expressed in grams of manicured material (*i.e.* leaves, flowering tops, and seeds):

| Basic class | Established revised 2000 aggregate production quota |
|---|---|
| Marihuana | 350,000 |

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary

importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Furthermore, this action involves only one basic class of controlled substances. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: November 7, 2000.

**Julio F. Mercado,**

*Deputy Administrator.*

[FR Doc. 00–29440 Filed 11–16–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New York
- NY000003 (Feb. 11, 2000)
- NY000013 (Feb. 11, 2000)
- NY000018 (Feb. 11, 2000)
- NY000021 (Feb. 11, 2000)
- NY000026 (Feb. 11, 2000)
- NY000029 (Feb. 11, 2000)
- NY000055 (Feb. 11, 2000)
- NY000060 (Feb. 11, 2000)

*Volume II*

Pennsylvania
- PA000002 (Feb. 11, 2000)
- PA000003 (Feb. 11, 2000)
- PA000007 (Feb. 11, 2000)
- PA000008 (Feb. 11, 2000)
- PA000010 (Feb. 11, 2000)
- PA000016 (Feb. 11, 2000)
- PA000018 (Feb. 11, 2000)
- PA000019 (Feb. 11, 2000)
- PA000020 (Feb. 11, 2000)
- PA000021 (Feb. 11, 2000)
- PA000027 (Feb. 11, 2000)
- PA000038 (Feb. 11, 2000)
- PA000059 (Feb. 11, 2000)
- PA000060 (Feb. 11, 2000)
- PA000061 (Feb. 11, 2000)
- PA000065 (Feb. 11, 2000)

*Volume III*

Georgia
- GA000003 (Feb. 11, 2000)
- GA000036 (Feb. 11, 2000)
- GA000085 (Feb. 11, 2000)
- GA000087 (Feb. 11, 2000)

*Volume IV*

None

*Volume V*

Kansas
- KS000002 (Feb. 11, 2000)
- KS000006 (Feb. 11, 2000)
- KS000007 (Feb. 11, 2000)
- KS000010 (Feb. 11, 2000)
- KS000011 (Feb. 11, 2000)
- KS000013 (Feb. 11, 2000)
- KS000015 (Feb. 11, 2000)
- KS000018 (Feb. 11, 2000)
- KS000020 (Feb. 11, 2000)
- KS000021 (Feb. 11, 2000)
- KS000023 (Feb. 11, 2000)
- KS000026 (Feb. 11, 2000)

Nebraska
- NE000010 (Feb. 11, 2000)
- NE000021 (Feb. 11, 2000)

*Volume VI*

None

*Volume VII*

Nevada
- NV000005 (Feb. 11, 2000)

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National

Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 8th Day of November 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–29151 Filed 11–16–00; 8:45 am]

**BILLING CODE 4510–27–M**

## NATIONAL CAPITAL PLANNING COMMISSION

### District of Columbia Plans for the Reuse and Restoration of Kingman and Heritage Islands; Public Meeting and Intent To Prepare an Environmental Assessment

**AGENCY:** National Capital Planning Commission and the District of Columbia Department of Parks and Recreation.

**ACTION:** Notice of intent regarding proposed development by the District of Columbia for the reuse and restoration of Kingman and Heritage Islands. Legislation granting title of the Islands to the District of Columbia requires that any redevelopment of the Islands comply fully with the requirements of the National Environmental Policy Act (NEPA) of 1969. This notice indicates the intent to prepare an Environmental Assessment and scoping for the action pursuant to NEPA and the National Historic Preservation Act, section 106.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission (Commission), the Commission announces its intent, in conjunction with the District of Columbia Department of Parks and Recreation, as Joint Lead Agencies, to conduct one (1) public meeting to discuss the preparation of an Environmental Assessment (EA) for the proposed development, reuse, and restoration of Kingman and Heritage Islands located within and adjacent to the Anacostia River in the District of Columbia. The purpose of the public meeting is to determine the significant environmental issues related to the construction and operation of all proposed development planned by the District of Columbia Department of Parks and Recreation and share preliminary information on potential impacts, solicit community input, and determine potential development plans. The meeting will serve as part of the environmental scoping process for the preparation of the EA.

This Notice of Intent (NOI) initiates the formal environmental review process for this project that may proceed to the development of an Environment Impact Statement if it is determined that significant environmental impacts would occur from the planned action. The public is encouraged to submit written comments concerning alternatives for the planned development and on any potential impacts at this time. The Commission and the District of Columbia considers an EA to be the appropriate initial analysis to review the potential environmental effects of the District of Columbia Department of Parks and Recreation plans. Public scoping and comments will be considered in the development of this initial NEPA review. An Environmental Impact Statement may result from the development of the EA and this NOI and scoping will be considered part of the Environmental Impact Statement scoping should that analysis be necessary. The comments and responses received on the scope of the alternatives and potential impacts will be considered for both environmental documents, but additional public comment will be required in the Environmental Impact Statement if that document is developed.

Kingman and Heritage Islands are located within the Anacostia River. Kingman is the larger of the two islands and is bisected by the Benning Road Bridge. The portion of Kingman Island north of the Benning Bridge is developed as part of the Langston Golf Course. The southern portion of the island is undeveloped and contains minimal vegetation. Several stands of mature trees exist along the water's edge and the remainder of the site is covered with fill, ground cover, and groundcover vegetation. Heritage Island is located immediately west of the portion of Kingman Island that lies between the Benning Road and East Capitol Street Bridges. This island is also undeveloped and is similar to Kingman. The islands were created in 1916 by the U.S. Army Corps of Engineers as part of a reclamation project for improving the flow in the Anacostia River. The larger island contains approximately 40 acres and is just over a mile in length. The smaller island, Heritage Island, is approximately 6 acres.

The community and District of Columbia Office of Planning have identified three alternative scenarios for development. These include:

**Option A—Landscape Enhancements and Passive Uses**

Option A emphasizes minimal development and generally passive uses on both Kingman and Heritage Islands. The Islands would be used for walking or jogging around the Islands and explorations from the water via human-powered watercraft that can access the island from a boat tie-up point. Other low-intensity uses could also be considered including a modest monument or artistic installations, a boardwalk through the wetland in Kingman Lake, a children's playground or community maintained garden. No permanent structures are envisioned and no development would occur on Heritage Island.

The Islands would predominantly be accessed via the footbridges from the RFK Stadium parking lot. Security would be maintained by prohibiting use of the Islands after dusk, thus requiring fencing and some security lighting at the points of entry.

**Option B—Moderate Usage of the Islands for Educational Purposes**

Option B allows more interactive uses on the island while preserving and enhancing the majority of the island as a natural area. This option includes a full-scale environmental education center that could range in size from a one-room exhibit space to a two-story structure that includes a classroom and laboratory. This building could also accommodate a police sub-station to enhance security on the islands. A mix of trails will include both paved and unpaved routes around Kingman Island and a boardwalk through the Kingman Lake wetlands. A boat-tie up point will be created to allow access to the islands from the water. Bird observation towers will be constructed so as to blend in with the natural landscape. A playground will be provided for children and a camping area for overnight excursions will be established

and maintained. This option may also include a monument or sculpture.

A variation on Option B would also incorporate a 3-hole youth golf facility in the extreme northern portion of the island. The environmental impacts of this option will be assessed both with and without the golf development.

Access to the islands would be permitted both from the footbridges and, because of the need for service deliveries, from the Benning Road access drive. Security would be maintained by closing the gates to the Island at dusk and providing an Urban Ranger to help patrol the islands. Security must be provided when campers are on the islands.

**Option C—Active Use for Recreational Purposes**

Option C focuses on the reuse of the Islands as a 9-hole, par 3 youth golf facility. This use would develop the upper portion of Kingman Island as a putting green and golf holes. The facility will be accessible from Langston Golf Course via an underpass under Benning Road on the east side of the Island. The development would also include a riverwalk along the edge of the golf course and extending down the length of the islands. A boat-tie up and bird observation towers will also be provided in this development plan. In addition, monuments and public art, camping facilities, and a playground could also be incorporated.

Security will be maintained by regular use and activity on the islands. In addition, the golf course will be well lit with the possibility of extending lighting along the major trails. It is anticipated that some form of private security might also be employed in conjunction with regular police patrols.

The EA will identify and analyze environmental impacts and mitigation options of the alternative plans including the No Action alternative. Topics for environmental analysis include short-term construction-related impacts; long-term changes in traffic, parking, socio-economic impacts, land use and physical/biological conditions within the project area; cultural (historic and archeological) in accordance with the Section 106 of the National Historic Preservation Act, and visual resource protection, site operation, and maintenance.

**SUPPLEMENTARY INFORMATION:** The environmental scoping process will include all written comments and one (1) public meeting for the purpose of determining significant issues related to the alternatives and to the potential impacts associated with the proposed development of Kingman and Heritage Islands. The public meeting will be held: Tuesday, December 12, 2000, 6 PM–9 PM at the St. Benedict the Moor Church, 320 21st Street, NE (21st & C Streets), Washington, D.C. 20002.

This public meeting will be advertised locally by the District of Columbia Department of Parks and Recreation and notice will appear in the District of Columbia Register. National Capital Planning Commission, District of Columbia Department of Parks and Recreation, and District of Columbia Office of Planning representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, regional and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the EA.

An Informational Packet will be available for review at the offices of the National Capital Planning Commission at 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, and at the District of Columbia Office of Planning. Contact Karina Ricks, D.C. Office of Planning, 801 N. Capitol Street, NE, Washington, D.C. 20002, Phone: (202) 442–7600, fax: (202) 442–7637, email: karina.ricks@dc.gov. Agencies and the general public are invited and are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental scoping comments should clearly describe specific issues or topics that the community believes the EA should address.

**DATES:** All written statements regarding environmental review of the Proposed Kingman and Heritage Island development must be postmarked no later than January 12, 2001, to the following address: National Capital Planning Commission, 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, Washington, D.C. 20576, Attention: Mr. Eugene Keller, Environmental Review Officer.

**FOR FURTHER INFORMATION PLEASE CONTACT:** National Capital Planning Commission, Mr. Eugene Keller, Environmental Review Officer, 401 Ninth Street, NW, 5th Floor, Suite 500, North Lobby, Washington, D.C. 20576, Phone: (202) 482–7270 or Karina Ricks, DC Office of Planning, 801 N. Capitol Street, NE, Washington, D.C. 20002, Phone: (202) 442–7600.

Dated: November 8, 2000.

**Ash Jain,**

*General Counsel and Congressional Liaison, National Capital Planning Commission.*

[FR Doc. 00–29532 Filed 11–16–00; 8:45 am]

BILLING CODE 7520–01–U

## NATIONAL COUNCIL ON DISABILITY

### Advisory Committee Meeting/ Conference Call

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice sets forth the schedule of the forthcoming meeting/ conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10 (a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

*International Watch:* The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

**DATE:** December 13, 2000, 12 p.m.–1 p.m. EST

*For International Watch Information, Contact:* Kathleen A. Blank, Attorney/ Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

*Agency Mission:* NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

*Open Meeting/Conference Call:* This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the

conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above. Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for pubic inspection at NCD.

Signed in Washington, DC, on November 14, 2000.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 00–29515 Filed 11–16–00; 8:45 am]

BILLING CODE 6820–MA–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* General Licensee Registration.

3. *The form number, if applicable:* NRC Form 664.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.

6. *An estimate of the number of annual respondents:* 4,300.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,433 hours annually (4,300 respondents x 20 minutes per form).

8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Applicable.

9. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

A copy of NRC Form 664 and the final OMB supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 1F23, Rockville, MD 20852. OMB clearance requests are also available at the NRC Worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The OMB supporting statement, and NRC Form 664 will be available on the NRC home page for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 18, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Amy Farrell, Office of Information and Regulatory Affairs (3150– ), NEOB–10202, Office of Management and Budget, Washington, DC 20503, (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, on this 13th day of November, 2000.

For the Nuclear Regulatory Commission.

**Beth C. St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–29458 Filed 11–16–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 6–9, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

**Wednesday, December 6, 2000**

*1 p.m.–1:05 p.m.: Opening Statement by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*1:05 p.m.–3 p.m.: Issues Associated with Core Power Uprates* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding issues associated with core power uprates, including: Staff plans for developing a Standard Review Plan Section for power uprate reviews; staff position regarding the need for applying risk-informed decisionmaking in the review of significant power uprate applications; and other related matters.

*3:15 p.m.–4:45 p.m.: Differing Professional Opinion (DPO) on Steam Generator Tube Integrity* (Open)—The Committee will hear a report by the Chairman of the Ad Hoc Subcommittee on DPO regarding conclusions and recommendations of the Ad Hoc Subcommittee on the technical merits of the DPO issues, and will meet with representatives of the NRC staff and the DPO author, as needed.

*4:45 p.m.–5 p.m.: Subcommittee Report* (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee regarding the status of review of the GE Nuclear Energy TRACG best-estimate thermal-hydraulic code.

*5 p.m.–5:15 p.m.: Subcommittee Report* (Open)—The Committee will hear a report by the Chairman of the Plant Systems Subcommittee regarding ABB/CE and Siemens digital I&C applications and insights gained from a meeting with the RSK on digital I&C in Germany during November 2000.

*5:30 p.m.–7 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports. In addition, it will prepare a response to the Commission request that the ACRS provide a detailed discussion on how the perceived weaknesses with industry-developed thermal-hydraulic codes may adversely affect the NRC's regulatory role and provide more specific recommendations on how those weaknesses should be addressed.

**Thursday, December 7, 2000**

*8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–9:30 a.m.: Meeting with NRC Commissioner Diaz* (Open)—The Committee will meet with NRC Commissioner Diaz to discuss the NRC Safety Research Program and other items of mutual interest.

*9:45 a.m.–11:45 a.m.: South Texas Project Exemption Request* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and South Texas Project

Nuclear Operating Company (STPNOC) regarding the STPNOC's exemption request to exclude certain components from the scope of special treatment requirements in 10 CFR Part 50 and the associated NRC staff's Draft Safety Evaluation Report.

*12:45 p.m.–2:15 p.m.: Control Room Habitability* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the nuclear industry regarding issues associated with control room habitability and the staff and industry efforts in resolving those issues.

*2:30 p.m.–4 p.m.: Proposed Final Regulatory Guide DG–1053, ''Calibration and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence''* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Regulatory Guide DG–1053, including the staff's resolution of public comments.

*4 p.m.–5 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*5 p.m.–7 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Friday, December 8, 2000**

*8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10 a.m.: Proposed Modifications to the Commission's Safety Goal Policy Statement for Reactors* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed modifications to the Commission's Safety Goal Policy Statement for reactors.

*10:15 a.m.–11:30 a.m.: Annual Report to the Commission on the NRC Safety Research Program* (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program, and will meet with representatives of the NRC staff, as needed.

*1 p.m.–1:30 p.m.: Future ACRS Activities/ Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

*1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

*1:45 p.m.–2:15 p.m.: Election of ACRS Officers for CY 2001* (Open)—The Committee will elect a Chairman and Vice Chairman for the ACRS and a Member-at-Large for the Planning and Procedures Subcommittee for CY 2001.

*2:15 p.m.–3:15 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

*3:15 p.m.–7 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Saturday, December 9, 2000**

*8:30 a.m.–1 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

*1 p.m.–1:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. James E. Lyons, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. James E. Lyons prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. James E. Lyons if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. James E. Lyons (telephone 301–415–7371), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 2001 are provided below:

| ACRS meeting No. | Meeting dates |
|---|---|
| ..... | January 2001—No meeting. |
| 479 ..... | February 1–3, 2001. |
| 480 ..... | March 1–3, 2001. |
| 481 ..... | April 5–7, 2001. |
| 482 ..... | May 10–12, 2001. |
| 483 ..... | June 6–8, 2001. |
| 484 ..... | July 11–13, 2001. |
| ..... | August 2001—No meeting. |
| 485 ..... | September 6–8, 2001. |
| 486 ..... | October 4–6, 2001. |
| 487 ..... | November 8–10, 2001. |
| 488 ..... | December 6–8, 2001. |

Dated: November 13, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–29460 Filed 11–16–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 5, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, December 5, 2000—1 p.m. Until the Conclusion of Business**

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 9, 2000.

**James E. Lyons,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–29461 Filed 11–16–00; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection: Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–3, SEC File No. 270–87, OMB Control No. 3235–0078.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection[s] of information to the Office of Management and Budget for extension and approval.

- Rule 15c3–3 Customer Protection—Reserves and Custody of Securities

Rule 15c3–3 requires broker-dealers that hold customer securities to obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the rule requires broker-dealers that hold customer funds to make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires broker-dealers (1) to maintain a description of the procedures utilized to comply with the possession and control requirements of the rule; (2) to maintain a written notification from the bank where the Special Reserve Bank Account is located that all assets in the account are for the exclusive benefit of broker-dealer's customers; and (3) to give telegraphic notice to the Commission, and the appropriate Self-Regulatory Organization under certain circumstances.

Commission staff estimates that the average number of hours necessary for each broker-dealer subject to the rule to make the required reserve computations is 2.5 hours per response. Approximately 327 broker-dealers choose to make a weekly computation and 115 broker-dealers choose to make a monthly computation. Accordingly, the total burden for this requirement is estimated to be 45,960 hours annually for all broker-dealers, based upon past submissions. The staff believes that financial reporting specialists will make the computations. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour.[1] Consequently, Commission staff estimates that the annual total cost of compliance with the reserve computation requirement for all broker-dealers, taking overhead into consideration, is $3,327,504.

In addition, Commission staff estimates that broker-dealers file approximately 30 notices per year pursuant to the rule. Commission staff estimates that it takes approximately 30 minutes to file each notice. Accordingly, the total burden for this requirement is estimated to be 15 hours annually for all broker-dealers, based on past submissions. The average cost per hour is approximately $72.40. Consequently, Commission staff estimates that the annual total cost of compliance with the notice requirement for all broker-dealers, taking overhead into consideration, is $1,086.

Based on the above, Commission staff estimates that the total cost of compliance with the rule for all broker-dealers is $3,328,590.

Written 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 9, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29442 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Per Securities Industry Association (SIA) Management and Professional Earnings, Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 17Ad–2(c), (d), and (h), SEC File No. 270–149, OMB Control No. 3235–0130

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') had submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

- Rule 17 Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), 17 CFR 240.17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 900 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates a cost of approximately $30.00 for each half hour spent preparing the notices per year, transfer agents spend an average of five hours per year complying with the rule at a cost of $300.

Written 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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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. Considerations will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 7, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29443 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43545; File No. S7–24–89]**

## Joint Industry Plan; Solicitation of Comments on the Pacific Exchange, Inc.'s Request To Expand the Number of Securities Eligible for Trading Pursuant to the Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis

November 9, 2000.

### I. Introduction

On October 16, 2000, the Pacific Exchange, Inc. (''PCX'') submitted [1] to the Securities and Exchange Commission (''Commission'' or ''SEC'') a request to expand the maximum number of Nasdaq National Market (''Nasdaq/NM'') securities eligible for trading [2] pursuant to the Joint Transaction Reporting Plan for the Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis (''Plan'').[3] The current maximum number of eligible Nasdaq/NM securities that may be traded pursuant to UTP is 1000 securities.[4] The Commission is soliciting comment on whether to expand the number of eligible Nasdaq/NM securities that may be traded by a national securities exchange pursuant to the Plan to include all Nasdaq/NM securities.

### II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[5] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when trasnaction reporting pursuant to

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[1] *See* Letter from Thomas E. Connaghan, Senior Vice President Equities, PCX, to Mr. Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, and Mr. Robert Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq'') (Oct. 16, 2000).

[2] Section 12(f) of the Securities Exchange Act of 1934 (''Act'') describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.* by extending unlisted trading privileges (''UTP'') to the security. *See* 15 U.S.C. 781(f). Section 12(f) required exchanges to apply to The Commission before extending UTP to any security. To approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. Section 12(f) was amended on October 22, 1994; the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications.

[3] The signatories to the Plan, *i.e.,* the National Association of Securities Dealers, Inc. (''NASD''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX'') (previously, the Midwest Stock Exchange, Inc.), the Philadelphia Stock Exchange, Inc. (''PHLX''), the PCX, and the Cincinnati Stock Exchange (''CSE'') are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[4] Exchange trading in Nasdaq/NM securities began in April 1987 when the CHX began trading 25 Nasdaq/NM securities. *See* Securities Exchange Act Release No. 24406 (April 29, 1987), 52 FR 17495 (May 8, 1987). The Commission increased the maximum number of eligible securities from 25 to 100 in 1991, from 100 to 500 in 1995, in response to a request from the CHX, and from 500 to the current 1000 limit in 1999, again in response to a request from the CHX. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990); Securities Exchange Act Release No. 36102 (Aug. 14, 1995), 60 FR 43626 (Aug. 22, 1995); and Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[5] *See* Section 12(f)(2) of the Act. 15 U.S.C. 781(f)(2).

[6] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[7] *See* Letter from David R. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation. (May 9, 1994).

[8] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (Jan. 11, 1995), 60 FR 3886 (Jan 19, 1995); Securities Exchange Act Release No. 36102 (Aug. 14, 1995), 60 FR 43626 (Aug. 22, 1995); Securities Exchange Act Release No. 36226 (Sept. 13, 1995), 60 FR 49029 (Sept. 21, 1995); Securities Exchange Act Release No. 36368 (Oct. 13, 1995); 60 FR 54091 (Oct. 19, 1995); Securities Exchange Act Release No. 36481 (Nov. 13, 1995), 60 FR 58119 (Nov. 24, 1995); Securities Exchange Act Release No. 36589 (Dec. 13, 1995), 60 FR 65696 (Dec. 20, 1995); Securities Exchange Act Release No. 36650 (Dec. 28, 1995), 61 FR 358 (Jan. 4, 1996); Securities Exchange Act Release No. 36934 (Mar. 6, 1996), 61 FR 10408 (Mar. 13, 1996); Securities Exchange Act Release No. 36985 (Mar. 18, 1996), 61 FR 12122 (Mar. 25, 1996); Securities Exchange Act Release No. 37689 (Sept. 16, 1996), 61 FR 50058 (Sept. 24, 1996); Securities Exchange Act Release No. 37772 (Oct. 1, 1996), 61 FR 52980 (Oct. 9, 1996); Securities Exchange Act Release No. 38457 (Mar. 31, 1997), 62 FR 16880 (Apr. 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (Dec. 31, 1997) 63 FR 1515 (Jan. 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (Dec. 31, 1998), 64 FR 1834 (Jan. 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); and Securities Exchange Act Release No. 42268 (Dec. 23, 1999), 65 FR 1202 (Jan. 6, 2000).

the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[6] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[7] The Plan has since been in operation on an extended pilot basis.[8]

### III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in ''eligible securities.'' The Plan contains various provisions concerning its operation, including Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer; Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

### IV. Description of the Proposal

The Commission is proposing pursuant to Section 12(f) of the Act[10] to expand the number of eligible Nasdaq/NM securities that may be traded by a national securities exchange pursuant to the Plan to include all Nasdaq/NM securities. The current maximum number of eligible Nasdaq/NM securities that may be traded pursuant to the Plan is 1000 securities.[11]

### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it it 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 change that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room.

All submissions should refer to File No. S7–24–89 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29446 Filed 11–16–8:45am]

**BILLING CODE 8010–01–M**

[9] The full text of the Plan, as well as ''Concept Paper'' describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

[10] 15 U.S.C. 781(f).

[11] *See supra* note 4.

[12] 17 CFR 200.30–3(a)(29).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43540; File No. 600–32]**

## Self-Regulatory Organizations; Global Joint Venture Matching Services—US, LLC; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

November 9, 2000.

### I. Introduction

On September 21, 2000, the Global Joint Venture Matching Services—US, LLC (''GJVMS'') filed with the Securities and Exchange Commission (''Commission'') an application on Form CA–1[1] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 17Ab2–1 thereunder.[3] GJVMS is requesting an exemption from clearing agency registration in connection with its proposal to offer an electronic trade confirmation service and a matching service. The Commission is publishing this notice to solicit comments on the exemption request.

### II. Background

#### *A. Structure of the GJVMS*

The GJVMS is a limited liability company which prior to the commencement of its operations will become a wholly-owned subsidiary of the Global Joint Venture. The Global Joint Venture is a proposed joint venture between The Depository Trust & Clearing Corporation (''DTCC''),[4] Thomson Institutional Services Inc. (''TISI''),[5] and Interavia, A.G., a Swiss corporate affiliate of TISI. Within the Global Joint Venture, the institutional trade processing services currently offered by DTC will be combined with the institutional trade processing services currently offered by Thomson Financial ESG.[6] While the Global Joint Venture will have several lines of business, it will conduct its domestic electronic trade confirmation (''ETC'') service and matching service wholly through the GJVMS.

Initially, the automated facilities and systems environment necessary to operate the ETC and matching services will be provided to the GJVMS by DTC pursuant to a services agreement between DTCC and the Global Joint Venture. Also pursuant to the services agreement, DTCC will provide to the Global Joint Venture legal and regulatory, audit, accounting, and human resources services, and the Global Joint Venture will make these services available to the GJVMS. It is anticipated that there will also be a services agreement between the Global Joint Venture and the GJVMS.

As explained in detail below, DTC and Thomson Financial ESG's institutional trade processing services are the two principal systems used by broker-dealers and institutional investors for post-trade, presettlement processing of trades. The merger of these two services would link the two largest providers of institutional post-trade, presettlement processing services, and as a result, would establish a core building block for straight-through processing (''STP'')[7] and T+1.[8]

DTCC will transfer to the Global Joint Venture DTC's TradeSuite which consists of the following services: TradeMessage, TradeMatch, TradeSettle, and TradeHub.

[1] Copies of GJVMS's Form CA–1 are available for inspection and copying at the Commission's Public Reference Room in File No. 600–32.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1.

[4] DTCC was created in 1999 as a holding company for The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC''). DTC and NSCC are registered with the Commission as clearing agencies.

[5] TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

[6] Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

[7] STP is the completion of presettlement and settlement processes based on trade data that each party to a transaction enters only once into an automated system.

[8] T+1 refers to an industry initiative to reduce the settlement cycle for securities transactions from three days (T+3) to one day (T+1). It is anticipated that the settlement cycle will be shortened from T+3 to T+1 during 2004.

1. TradeMessage provides for the automated exchange of post-trade messages between broker-dealers, custodians, and institutions, including messages such as block-trade notices of execution, allocation instructions, trade confirmations, and affirmations.

2. TradeMatch electronically compares investment managers' allocations with broker-dealers' trade confirmations.

3. TradeSettle supplies allocations, trade confirmations, and settlement messages with account and settlement data from DTC's Standing Instructions Database (''SID'') and routes settlement instructions to custodian banks and broker-dealers' clearing agents. SID is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.

4. TradeHub is a real-time global message switch which routes messages between parties using different communications protocols, message formats, and firm and securities identifiers.

TISI will transfer to the Global Joint Venture the following services of Thomson Financial ESG: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

1. ALERT is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.

2. OASYS provides for the electronic communication and acceptance or rejection of allocation instructions between investment managers and broker-dealers.

3. OASYS Global provides for the electronic communication of allocation instructions and confirmations between investment managers and broker-dealers.

4. MarketMatch streamlines the matching of trade details with broker counterparties around the world, leading to lower processing costs, improved trade management, and shorter settlement times.

5. ITM Benchmarks is a suite of services that provide operational statistics relating to trade processing. These include statistics on average response times, the number of attempts it takes to make settlement, and the percentage of trades ready for settlement at particular points in time.

*B. Current Institutional Trade Settlement Processes*

The institutional trade process typically starts when an institution or its agent places an order to buy or sell securities with its broker-dealer. After the broker-dealer executes the trade, the broker-dealer will advise the institution of the details of the executed trade. This is generally called a notice of execution. Once received, the institution advises the broker-dealer how the trade should be allocated among its various accounts.

When the broker-dealer completes allocating the shares among the institution's accounts, the broker-dealer submits trade data reflecting its distribution to each of the institution's accounts. DTC's TradeSuite service forwards the trade data in the form of a confirmation for each account to the institution, the broker-dealer, and other interested parties (*e.g.,* correspondent banks or trustees). The institution reviews the confirmation for accuracy (*i.e.,* compares the confirmation to its allocation instructions). For each confirmation that is accurate, the institution will send an information message to DTC. DTC will generate and send an affirmed confirmation to the broker-dealer and to the institution's settlement agent. At this point, the trade is sent into DTC's settlement system. (DTC's TradeSuite service is not a settlement system in that no money or securities move through it.) The trade also must be authorized by the party obligated to deliver the securities (*i.e.,* the selling party) before settlement can occur.

*C. The Commission's Interpretive Release on Matching*

On April 6, 1998, the Commission issued an interpretive release regarding matching services (''Matching Release'').[9] Matching is the term used to describe the process whereby an intermediary independently determines whether trade data submitted by a broker-dealer (*i.e.,* confirmation information) matches the trade data submitted from the broker-dealer's institutional customer (*i.e.,* allocation information). If the information matches, the intermediary generates an affirmed confirmation to the broker-dealer and the institution. In the Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the ''comparison of data respecting the terms of settlement of securities transactions,'' within the meaning of Section 3(a)(23)(A) of the Exchange Act.[10] Therefore, any person providing independent matching services must either register with the Commission as a clearing agency or obtain an exemption from registration pursuant to Section 17A of the Exchange Act and Rule 17Ab2–1 thereunder.[11]

## III. GJVMS's Request for Exemption

*A. Introduction*

The purpose of the GJVMS will be to introduce significant efficiencies into institutional trade processing by combining the complementary post-trade, presettlement services of DTC and Thomson Financial ESG to offer the securities industry an integrated system for post-trade, presettlement processing of institutional trades. This should assist firms in dealing with the ever growing and unprecedented levels of securities trading. The GJVMS will also be a positive response to the expected move to T+1.

According to ''Paving The Way To Straight Through Processing'' (July 2000), a white paper published by DTCC, as trading volumes have continued their dramatic upward climb over the past decade, securities industry executives are focusing their attention on the transformation the industry must undergo to cope with these volumes and the potential for even greater increases in the years ahead. According to DTCC and the Securities Industry Association (''SIA''), 250 million institutional trade confirmations were processed in 1999.

The industry has concluded that the current post-trade presettlement processing system for institutional trades will need major changes if a shorter settlement period is to be achieved. Even in a T+3 environment, the current system is showing signs of strain under the increasing volumes of trades. Today, institutional trades are primed for settlement through a series of sequential and repetitive steps, using a process developed when the volume of trades was far lower than it is today and when settlement occurred on T+5.

To deal with this increasing volume, the industry has embraced the concept of straight-through processing or STP which, in its most basic form, is the process of seamlessly passing information to all parties without manual handling or redundant processing. Concurrent with this objective, the industry is seeking to reduce risk, by shortening the time between trade date and settlement date.

[9] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98].

[10] 15 U.S.C. 78c(a)(23)(A).

[11] 15 U.S.C. 78q–1; 17 CFR 240.17Ab2–1. The Commission has approved a proposed rule change filed by DTC that allows DTC to provide matching services. Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR–DTC–95–23]. The Commission has also granted Thomson Financial Technology Services, Inc., a wholly owned subsidiary of TISI, an exemption from registration as a clearing agency. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31].

Many in the industry believe that changing the institutional post-trade presettlement process is called for, even without factoring in a move to T+1.[12] The existing process is showing signs of strain as trade volume grows. As firms have increased their investments to add capacity and improve internal processing, confirm and affirm rates have not improved, leading to greater risk for the industry.[13]

*B. GJVMS's Proposed Service*

GJVMS plans on offering an ETC service and a matching service. The ETC service would transmit messages (*i.e.*, confirmation and affirmation messages) among broker-dealers, institutional customers, and custodian banks and would ultimately result in the production of an affirmed electronic trade confirmation in accordance with the requirements of various self-regulatory organizations rules.[14] The matching service would compare, or match trade information submitted by a broker-dealer (*i.e.,* confirmation information) with the trade information submitted by an institutional customer (*i.e.,* allocation instructions) to produce an affirmed confirmation.[15]

GJVMS represents in its Form CA–1 that as a condition of obtaining an exemption from clearing agency registration, it shall.[16]

(1) Provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies (ARPs);[17]

(2) Provide the Commission (beginning in its first year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs;

(3) Provide the Commission with twenty business days advance notice of any material changes that it makes to its matching service and ETC service. These changes will not require the Commission's approval before they are implemented;

(4) Provide the Commission with prompt notification of significant systems outages lasting more than thirty minutes;

(5) Respond and its service providers (including DTCC and Global Joint Venture) shall respond to requests from the Commission for additional information relating to its matching service and ETC service and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions of GJVMS's exemptive order;

(6) Supply the Commission or its designee with periodic[18] reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC Service;

(7) Preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. It shall retain these records for a period of not less than five years, the first two years in an easily accessible place;

(8) Develop fair and reasonable linkages between its matching service and other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission; and

(9) Not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted under the contemplated exemption.

*C. Statutory Standards*

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission before performing any of the functions of a clearing agency.[19] However, Section 17A(b)(1) also states that, upon our own motion or upon a clearing agency's application, we may conditionally or unconditionally exempt the clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A. The GJVMS believes that the undertakings it has proposed as a condition of obtaining an exemption from clearing agency registration will allow it to protect the public interest and will strike the appropriate balance between the necessity of safety and soundness on the one hand and the need to foster efficiency, competition, and capital formation on the other hand.

The Commission has exercised its authority to conditionally exempt an applicant from clearing agency registration on four prior occasions.[20] In those cases, the applicants requesting exemption from clearing agency registration were required to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of that section were furthered (*i.e.*, safety and soundness of

[12] In July 2000, the SIA released its T+1 Business Case Model which the Commission is in the process of reviewing.

[13] The average daily U.S. institutional trade volume increased to 432,000 trades in 1999 from 182,000 trades in 1995. However, in 1999, an average of 70,000 institutional trade confirmations with an average value of $15 billion a day, were not submitted by broker-dealer into DTC's TradeSuite system on trade date. This doubled the 1995 average of 36,000 valued at $7 billion. DTCC has experienced trade date confirmation input rates as low as 76% on certain peak days during the first quarter of 2000 as compared with the fairly steady average rate of 85% over the past several years. In addition, only 12% of trades are currently affirmed on trade date and only 88% of trades are affirmed by noon of T+2, the deadline for automatic submission of the affirmed trade into DTC's settlement system. The remaining 12% are not automatically entered into DTC's settlement system and require further action on the part of the parties to settle. As trade volumes continue to rise or in a T+1 environment, these levels will be unacceptable.

[14] These rules are National Association of Securities Dealers Rule 11860(a)(5), New York Stock Exchange Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G–15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Rule 274(b).

[15] The matching service will be used to match trade information where either the broker-dealer or the institutional customer or both is a U.S. entity and where the security is registered in the United States.

[16] Exhibit S of GJVMS's Form CA–1. GJVMS also represents that it will not impose prohibitions or limit access to its service by potential customers but that it might terminate a subscription for failure to pay fees.

[17] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 and 29185 (May 9, 1991), 56 FR 22490.

[18] DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule.

[19] 15 U.S.C. 78q–1(b)(1).

[20] Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving application for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank, now Clearstream); 39643 (February 11, 1998), 63 FR 8232 (order approving application for exemption from clearing agency registration by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System); and 41377 (May 7, 1999), 64 FR 25948 (order approving application for exemption from clearing agency registration for Thomson Financial Technology Services, Inc.).

the national clearance and settlement system).

In the Matching Release, the Commission stated that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, the Commission stated that an entity seeking an exemption from clearing agency registration for matching would be required to: (1) Provide the Commission with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (3) allow the Commission to inspect its facilities and records; and (4) make periodic disclosures to the Commission regarding its operations.

GJVMS's matching service would be the only clearing agency function that it would perform under an exemptive order. While the Commission believes that GJVMS's matching services could have a significant impact on the national clearance and settlement system, the Commission does not believe that GJVMS's matching services raise all of the concerns raised by an entity that performs a wider range of clearing agency functions. GJVMS represents in its Form CA–1 that as a condition of its exemption, it will comply with the conditions suggested by the Commission in the Matching Release. Therefore, the Commission believes that it may not be necessary to require GJVMS to satisfy all of the standards required of registrants under Section 17A.

The Commission anticipates that in addition to considering the public interest and the protection of investors, the primary factor in evaluating GJVMS's application will be whether GJVMS is so organized and has the capacity to be able to facilitate prompt and accurate matching services subject to the specific conditions that it has proposed.[21] In particular, GJVMS has represented that, among other things, it will provide the Commission with (1) an independent audit report that addresses all the areas discussed in the Commission's ARPs prior to beginning commercial operations and annually thereafter, (2) on-site inspection rights, and (3) a current balance sheet and income statement prior to beginning operations.

The Commission expects that any exemption from clearing agency registration for GJVMS would contain all of the conditions that GJVMS has proposed in its Form CA–1. The Commission requests comment on whether these conditions are sufficient to promote the purposes of Section 17A and to allow the Commission to adequately monitor the effects of GJVMS's proposed activities on the national system for the clearance and settlement of securities transactions. In addition, the Commission invites commenters to address whether granting GJVMS an exemption from clearing agency registration would impose any burden on competition that is not necessary or appropriate in furtherance of Section 17A of the Exchange Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by December 18, 2000. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant GJVMS's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Reference should be made to File No. [600–32]. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29447 Filed 11–16–00; 8:45 am]

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[21] *See* Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)(A).

[22] 17 CFR 200.30–3(a)(16).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43521; File No. SR–CBOE–00–44]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation

November 3, 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 August 31, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On October 10, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a rule change consisting of an interpretation of Article Fifth of the CBOE Certificate of Incorporation, as interpreted in the agreement between the CBOE and the Chicago Board of Trade (''CBOT'') dated September 1, 1992 (the ''1992 Agreement''), which is incorporated in CBOE Rule 3.16(b), concerning the effect of the proposed restructuring of the CBOE or other action that may be taken by the CBOT to change its trading rules or procedures on the right of the 1,402 full members of the CBOT to become members of CBOE without having to purchase a CBOE membership (the ''exercise right''). The CBOE's proposed rule change also embodies a plan to enable CBOE to continue to provide fair and orderly markets in the securities traded on the Exchange in the event the exercise right is extinguished as a result of action taken by the CBOT. Below is the text of the proposed rule change. New language is *italicized*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Assistant Corporate Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (October 10, 2000). Amendment No. 1 supersedes the original filing in its entirety.

**Special Provisions Regarding Memberships**

Rule 3.16(a)–(b) No change.

*Interpretation and Policies*

*.01 Pursuant to and in accordance with the Exercise Right embodied in Paragraph (b) of Article Fifth of the Exchange's Certificate of Incorporation, every present and future member of the CBOT, ''so long as he remains a member'' of CBOT, may be an exerciser member of the Exchange. As the Exercise Right has been interpreted in paragraph (b) of this Rule and in the 1992 Agreement referred to therein, only Eligible CBOT Full Members and Eligible CBOT Full Member Delegates have the right to become exerciser members of the Exchange. The 1992 Agreement defines an ''Eligible CBOT Full Member'' to mean ''an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships (''CBOT Full Memberships'') and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The term ''Eligible CBOT Full Member Delegate'' is defined in the 1992 Agreement to mean ''the individual to whom a CBOT Full Membership is delegated (leased) and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The 1992 Agreement also provides that ''in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member.'' CBOT, which since its inception has been a not-for-profit membership corporation, is proposing to demutualize or otherwise restructure so as to become a for-profit stock corporation. As a part of that restructuring, CBOT has transferred its electronic trading system to a new subsidiary. While not part of the current restructuring, CBOT may in the future distribute shares in the new subsidiary to CBOT members (stockholders), and it may issue additional shares in the new subsidiary as a part of a public or private financing. In addition, either as part of its restructuring or in a change to its trading rules and procedures that it may implement apart from the restructuring, CBOT proposes to give direct trading access to the electronic trading system to persons who are not now members of CBOT, and to trade all CBOT products on the electronic trading system, including its agricultural contracts and other products heretofore traded only by CBOT Full Members on the CBOT open-outcry trading floor.*

*Once CBOT becomes a stock corporation, it will no longer have members. Nevertheless, so long as CBOT does no more than convert from a membership corporation to a stock corporation without changing its trading rules and procedures so as to extend the right to trade CBOT products, electronically or otherwise, to persons who are not CBOT full members or the stockholder equivalent of such members, CBOE interprets its rules to treat persons who become stockholders of CBOT in the restructuring as a result of their ownership of one of the 1,402 full CBOT memberships (or their delegates) as if they were full members for purposes of the Exercise Right. This means that so long as those stockholders retain all of the stock and other interests that may be distributed to them in respect of their full CBOT memberships and continue to hold all of the trading rights and privileges in respect of CBOT that they held in their former status as full members of CBOT, then those stockholders or their delegates who satisfy the requirements of an eligible CBOT Full Member Delegate will be entitled to the Exercise Right.*

*However, CBOE interprets the Exercise Right to terminate immediately for all 1,402 CBOT full members or the stockholder-equivalent of such members (of their delegates) if, whether as a part of a demutualization or other restructuring of CBOT or otherwise, CBOT changes its trading rules and procedures so as to extend the right to trade all CBOT products, electronically or otherwise, to persons who are not CBOT Full Members or the stockholder-equivalents of such members (or their delegates) or so that, if the Exercise Right were to continue to be available, CBOT Full Members or the stockholder-equivalents of such members (or their delegates) would be able to trade all CBOT products directly on CBOT at the same time as they are trading on the Exchange as exerciser-members.*

*In the event the Exercise Right is terminated pursuant to the preceding paragraph, the Exchange will promptly act to develop and propose a plan that will respond to CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades, and at the same time will be fair to the 1,402 former members of CBOT who will have lost their exercise rights. The plan to be developed by CBOE for this purpose will be subject to the approval of the Exchange membership, and to the approval of the Securities and Exchange Commission.*

*During an interim period while this plan is being developed, the Exchange shall interpret its rules to stay the impact of the extinguishment of the Exercise Right on the trading access of those CBOT full members (or their delegates) who were exerciser members of the Exchange in good standing as of the close of business on August 28, 2000 (''grandfathered exercisers''), and shall permit such persons to continue to be able to trade on the Exchange for the duration of the interim period notwithstanding the extinguishment of the exercise right. This interim period will extend for at least six months from the date the Exchange gives notice to its members that exercise right has been extinguished as a result of the restructuring of CBOT or changes to CBOT's trading rules or procedures as described above, and for any additional period until the Exchange's permanent plan to respond to the termination of the Exercise Right has been approved and implemented. However, once the Exercise Right is terminated under this interpretation, CBOT members or stockholders (or their delegates) who were not exerciser members of the Exchange in good standing on August 28, 2000, shall not be permitted to exercise or have access to the Exchange's trading floor during the interim period. In order to continue to have trading access to the Exchange during this interim period, grandfathered exercisers will be required to maintain their status as members or stockholders of CBOT in good standing in accordance with the rules of CBOT (or as the delegates of such members or stockholders). Among other things, this means that delegates will need to remain in compliance with the terms of their CBOT lease arrangements.*

**II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide an interpretation of the rules of the CBOE concerning the effect of the CBOT's proposed restructuring and of other changes that the CBOT proposes to make to the trading rights and privileges of its members on the exercise right. The proposed rule change also includes a plan to enable the CBOE to continue to provide fair and orderly markets if the exercise right is extinguished because of the consummation of certain steps of the proposed restructuring of the CBOT or the consummation of the other changes to the CBOT's trading procedures.

*Background of the Exercise Right*

Paragraph (b) of the Article Fifth of the CBOE's Certificate of Incorporation (hereafter, ''Article Fifth(b)'') provides in part that ''every present and future member of [CBOT] who applies for membership in the [Exchange] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [Exchange] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [Exchange], its members or elsewhere.'' Paragraph 2(a) of the 1992 Agreement provides that only an individual who is an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate'' is a member of the CBOT within the meaning of Article Fifth(b). Paragraph 1(a) of the 1992 Agreement defines an ''Eligible CBOT Full member'' to mean ''an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships (''CBOT Full Memberships'') *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The term ''Eligible CBOT Full Member Delegate'' is defined in Paragraph 1(b) of the 1992 Agreement to mean ''the individual to whom a CBOT Full membership is delegated (leased) *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' (Emphasis supplied in both definitions.) Paragraph 2(b) of the 1992 Agreement also provides that ''in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts, and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member.''

These provisions reflect an underlying intent that CBOT members must choose at any given time to use their CBOT membership to trade either on the CBOT or (by exercise) on the CBOE, but not on both exchanges at the same time. This fundamental principle has driven the way in which the exercise right has been interpreted as the CBOT's trading procedures have evolved over the years. When the exercise right was first included in the CBOE's Certificate of Incorporation as a right belonging to CBOT members, the concept of exchange membership, on the CBOT as on all exchanges, embraced the indivisible coupling of trading access and ownership. All of CBOT's owners had the right to trade there, and the only persons who had the right to trade on the CBOT were its owners. The traditional integration of access and ownership embodies in the concept of membership was subsequently attenuated, when ''seat-leasing'' was permitted on the CBOT in the late 1970s and when the CBOT proposed to allow its members to split the trading rights of its members by issuing evening trading permits. In each of these cases, Article Fifth(b) was interpreted so as to preserve the original intent of the exercise right. In the case of seat leasing, the CBOE interpreted its rules to provide that only the delegate (lessee) of a CBOT membership who held all of the trading rights appurtenant to full membership would be able to exercise, and that the owner of the CBOT membership, by giving up his trading rights to a delegate, has lost the right to exercise. In response to evening trading permits and other split-ups of the trading rights of CBOT members, the CBOT and the CBOE agreed in Paragraph 2(b) of the 1992 Agreement that, in the event of any such a split-up or division of CBOT Full Memberships into two or more parts, ''all such parts, *and* the trading rights and privileges appurtenant thereto, * * * must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member [of CBOE].'' [Emphasis supplied].

The common thread in each of these situations is that full CBOT members must choose at any given time whether to use their CBOT memberships to trade CBOE products and, while they are doing so, not to trade CBOT products. In other words, the exercise right consistently has been interpreted as imposing a practical cost on its use, because a CBOT member must be willing to give up trading access to CBOT products during any time that member is trading on the CBOE as an exerciser member. It always has been a fundamental assumption of the exercise right that this constraint, together with the related difficulties in managing the risk of trading while moving back and forth between the CBOT and the CBOE floors, would limit the number of exerciser members. In fact, over the past twenty years the number of full CBOT members (or delegates) who have been exerciser members of CBOE has fluctuated between approximately 450 and 700 individuals. In other words, at least 50% of the CBOT full members (or delegates) eligible to exercise at any given time have chosen not to do so, and instead have chosen to trade (or to lease the right to trade) as members of CBOT only. A principal purpose of the 1992 Agreement was to prevent any division either of the trading rights and privileges appurtenant to a CBOT full membership or of any division of the CBOT full membership itself from nullifying the practical cost associated with the use of the exercise right.

*CBOT's Restructuring Proposal and Changes to Electronic Trading Procedures*

Recently, the CBOT has proposed to its members a major restructuring of the CBOT that, if implemented, the CBOE believes will conflict with the terms and the purpose of the exercise right. The CBOT described its proposed restructuring in a ''Restructuring Report'' distributed to the CBOT membership on May 16, 2000,[4] and in ballot materials distributed to CBOT members on June 1, 2000, in connection with a membership vote on the first step of the restructuring, and the CBOT described a modified proposal in a letter to its members dated September 21, 2000.

As described in these materials, the CBOT's restructuring consists of a number of separate but related steps. The first step, which has already been accomplished, was to change the state of incorporation of the CBOT from Illinois to Delaware, while continuing to preserve the status of the CBOT as a not-for-profit membership corporation.[5]

[4] *See* CBOT Restructuring Report (May 16, 2000).

[5] The CBOE has stated that it will not take any action to limit the exercise right if the CBOT

Continued

The next step of the proposed restructuring, which also appears to have taken place, was the creation of a new, for-profit stock subsidiary of the CBOT, to which the CBOT has transferred its electronic trading system and related rights and obligations. These rights and obligations previously were held by a partnership (the Ceres Partnership), of which the CBOT was the sole general partner. The new electronic trading subsidiary owns and operates an electronic trading system for the trading of those CBOT products previously traded on the electronic trading system of the Ceres Partnership. This subsidiary proposes ultimately to trade all CBOT products.[6] In particular, the CBOT Restructuring Report states not only that ''CBOT members will be afforded full trading rights and privileges to trade at the electronic trading company,'' but also that nonmembers of the CBOT, wherever located, ''will not be required to own seats or any other type of membership interests in order to utilize directly the electronic trading platform.'' [7]

In other words, CBOT members no longer would enjoy exclusive access to trade CBOT products. Through this reformulated electronic trading platform, nonmembers would have equivalent access to trade CBOT products that previously could be traded only by and through members. The reformulated electronic trading facility apparently also would afford CBOT members (or their delegates) the ability to trade CBOT products at the same time as they are trading on the CBOE pursuant to the exercise right.

According to CBOT's materials, the next step of the CBOT's restructuring will be to change the form of organization of CBOT from a not-for-profit membership corporation to a for-profit stock corporation. When this has been accomplished, persons who had been members of the membership corporation will become stockholders of the stock corporation, in exchange for their membership interests in the CBOT. In the proposed restructuring that was described in June 2000, the CBOT stated that shares in the electronic trading subsidiary would be distributed to the former members of CBOT, either concurrently with the change of CBOT from a membership to a stock corporation or shortly thereafter. This action was to be followed by a public offering of additional shares in the electronic trading company. As more recently described in a September 21, 2000 letter from the Chairman of the Board to CBOT members, it now is proposed by CBOT that the electronic trading company would remain a wholly-owned subsidiary of CBOT after CBOT changes from a membership to a stock corporation. However, the CBOT still would continue to evaluate its ownership structure and consider whether to separately offer shares in the two companies or otherwise to separate their ownership in the future. Regardless of whether the electronic trading company remains a wholly-owned subsidiary of CBOT or its shares are distributed to persons other than CBOT, it appears from the CBOT materials, as part of the restructuring or concurrently with its implementation, the CBOT proposed to utilize the electronic trading company to provide comprehensive electronic access to trade CBOT products to individuals who are not CBOT members.[8]

These next steps of the restructuring, whether they consist only of the change to a for-profit stock corporation or also include the distribution of shares in the electronic trading subsidiary, are subject to one or more votes of the CBOT membership. According to the CBOT materials, these steps also are subject to applicable regulatory approvals from the Commodity Futures Trading Commission and the Commission. As of June 1, 2000, the CBOT anticipated implementing all of the steps of the restructuring prior to the end of the current year. Although the statements made by CBOT officials in announcing the revised restructuring in September did not mention any specific dates for implementing the next step of the restructuring, it was represented that the change in strategy would accelerate the process of demutualizing CBOT.

After announcing its revised restructuring plan, the CBOT also announced, in a letter dated September 20, 2000, from the Chairman of CBOT to the CBOT members, that its Board of Directors had approved a major change in the way in which all of CBOT's agricultural contracts would be traded, subject to the change being approved by a vote of the CBOT members. This change would result in all of CBOT's agricultural contracts, which heretofore have been traded only by CBOT full members by open-outcry on the CBOT trading floor, being traded during all of the CBOT's hours of operation on the electronic trading system, side-by-side with trading in the CBOT's open-outcry market. Although the details of this change have not yet been communicated, the September 20 letter stated that it was being proposed to ''satisfy member and customer demand for increased access to these products.''

*The Effect of CBOT's Proposed Changes on the Exercise Right*

If and when the CBOT implements the restructuring proposal described above and the proposed grant of electronic access to trade its products, including its agricultural contracts, the following changes will have been effected: (1) the CBOT no longer will be a membership corporation, but instead will be a stock corporation, with its former members as its stakeholders; (2) the CBOT's electronic trading system, formerly a member-access only system owned and operated by a partnership of which the CBOT was the general partner, will be an open-access system owned and operated by a for-profit subsidiary of the CBOT, although the CBOT thereafter may distribute the shares of that subsidiary to CBOT members or other persons; (3) all CBOT products will be traded side-by-side on the existing open-outcry trading floor (as long as that market continues to operate) and on the open-access electronic trading system; and (4) members of the CBOT no longer will enjoy exclusive access to trade directly all products traded on the CBOT because persons who are not members will now be able to trade directly all CBOT products through the CBOT's electronic system. Even if the CBOT implements only the modification to the way in which agricultural contracts are traded, without restructuring as a for-profit stock corporation, the right to trade these contracts, which formerly was limited to CBOT full members on the CBOT trading floor, will then be shared with all persons who have access to the new electronic trading facility.

The proposed restructuring of the CBOT and the proposed modification of the way in which agricultural products are traded will extinguish the exercise right, whether implemented together or separately. First, as already noted, after the CBOT restructures as a for-profit stock corporation, the CBOT no longer will have members, because the CBOT will no longer be a membership corporation. Accordingly, with specific reference to Article Fifth(b) of the CBOE Certificate of Incorporation, no person

implements no more than this step of the restructuring. *See* Letter dated June 29, 2000, from Thomas A. Bond, Vice-Chairman of CBOE, to David Brennan, Chairman of CBOT, enclosing CBOE Information Circular IC00–64.

[6] *See* CBOT Restructuring Report (May 16, 2000), at p. 12.

[7] *See* CBOT Restructuring Report (May 16, 2000), at pp. 12 and 14.

[8] As discussed below, the CBOT recently also proposed, independent of any restructuring proposal, to provide complete electronic access to trade its agricultural contracts by allowing them to be traded for the first time on the CBOT's electronic trading facility.

any longer will be within the category of ''present and future members'' of the CBOT who, for ''so long as he remains a member'' is entitled to avail himself of the exercise right. Moreover, by destroying its membership structure, the CBOT will have made it impossible for its former members to hold ''all trading rights and privileges appurtenant to such CBOT Full Membership,'' a requirement that Paragraphs 1(a) and 2(b) established as a fundamental prerequisite to the continued existence of the exercise right.

Second, once the CBOT's electronic trading facility may be accessed directly by nonmembers of the CBOT for the trading of CBOT products that previously could be traded only by CBOT members, CBOT members (or their delegates) will have lost a key ''privilege'' of membership within the meaning of the 1992 Agreement—namely, the privilege of being able to trade CBOT products to the exclusion of nonmembers. A ''privilege'' is defined as a ''particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens'' or a ''peculiar right, advantage * * * [or] power.'' [9] Under this definition, the exclusive access of CBOT members to trade CBOT products is a ''privilege,'' in that it is a ''particular or peculiar benefit or advantage'' that members enjoy and that is ''beyond the common advantages'' of nonmembers. The CBOT members therefore will have lost an important ''privilege'' of membership once the electronic trading facility is made available to nonmembers for the trading of CBOT products. Because CBOT members no longer will possess all of the ''rights and privileges appurtenant'' to their memberships, CBOT members will cease to meet the definitions of either an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate,'' the only categories of persons who are entitled to become a member of CBOE pursuant to the exercise right.

Notwithstanding that the change from a membership to a stock corporation would provide a sound basis for considering the exercise right to be extinguished, the CBOE does not interpret the exercise right as having been extinguished if the CBOT only takes this single reorganizational step. While the taking of this step and the consequent elimination of members of CBOT is inconsistent with the terms of Article Fifth(b) and the 1992 Agreement, the CBOE does not interpret Article Fifth(b) and the 1992 Agreement so that this step, by itself, will cause the termination of the exercise right, so long as the CBOT takes no further action to erode what has been the trading rights and privileges of its former members. Instead, if the CBOT does no more than to change from a Delaware not-for-profit membership corporation to a Delaware for-profit stock corporation and if the 1,402 CBOT full members thereby become stockholders of CBOT, the CBOE proposes to treat such persons in precisely the same way that full CBOT members are currently treated. This means that those 1,402 stockholders of CBOT would remain entitled to the exercise right if they retain all of the stock in CBOT and all other interests that may be distributed to them in respect of their full CBOT memberships and if they continue to hold all of the trading rights and privileges that they previously held as full CBOT members. Similarly, the CBOE proposes that delegates of all of the trading rights and privileges appurtenant to full CBOT membership (but not the delegating stockholder) would also continue to be entitled to the exercise right.

However, whether occurring when or after the CBOT becomes a stock corporation, and once the right to trade all CBOT products is made available to persons who are not CBOT members (or stockholders), the CBOE interprets the exercise right as being extinguished, because the CBOT would no longer have members and because the CBOT stockholders would no longer possess all of the trading rights and privileges appurtenant to membership. Moreover, even if the CBOT does not restructure as a stock corporation, the exercise right would be extinguished once CBOT members lose this privilege of exclusive access to trade CBOT products.[10]

As set forth above, these interpretations follow from, and are consistent with, not only the language of Article Fifth(b) as interpreted in the 1992 Agreement, but also the way in which the exercise right is intended to operate. In particular, the underlying purpose and intent of the exercise right has been that CBOT members need to choose at any given time to use their CBOT membership to trade either on the CBOT or (by the exercise right) on the CBOE, and may not trade on both exchanges at the same time. Because the exercise right has been interpreted to require CBOT members to make this choice, there has been a practical cost associated with the exercise right and therefore a natural constraint on the number of people who exercise.

However, the CBOT proposes a restructuring and a change in its trading rules or procedures as a result of which, CBOT membership no longer would be needed to trade CBOT products directly. If the exercise right were to survive such changes, CBOT members (or stockholders) would no longer have to choose at any given time between trading CBOT products as members or stockholders of that exchange or trading CBOE products as exerciser members of the CBOE. Instead, if the exercise right were not extinguished in the face of these changes, it is probable that all 1,402 of the present full members of CBOT, or their lessees, would chose to exercise to trade on the CBOE, since they could do so while retaining trading access to all CBOT products by means of the electronic trading facility.

Not only would this scenario be inconsistent with the language and purpose of Article Fifth(b) and the 1992 Agreement, it would inflict serious harm on the CBOE. First, it would undermine CBOE's ability to maintain a fair and orderly market. Instead of there being approximately 1,600 members trading on CBOE (the current 700 exercisers plus the approximately 900 persons who own a CBOE membership directly, or their lessees), there would likely be 2,300 persons having direct access to CBOE. This would strain CBOE's facilities to the breaking point, as it would lead to far more persons having direct access to the CBOE trading floor than the floor and its facilities are capable of accommodating. This development therefore would be inconsistent with the maintenance of fair and orderly markets on CBOE. Second, the addition of 700 additional CBOE members would allow the exercise right to dilute the value of CBOE memberships substantially in a way that has never been contemplated or allowed since the time the exercise right was first established.

Thus it is clear both as a matter of interpreting the language of Article Fifth(b) and the 1992 Agreement and of implementing the purposes intended to be served thereby, and in order to maintain the CBOE as a fair and orderly securities market, the exercise right should be extinguished once the CBOT restructures or otherwise changes its trading rules or procedures so as to deprive its full members of the exclusive trading access to its products,

[9] *See Black's Law Dictionary* at 1197 (6th Ed. 1990).

[10] Regardless of the effect of these developments on the exercise right, the CBOE believes that the exercise right would be extinguished with respect to those CBOT members who fail to continue to possess all of the interests in the CBOT that may have been distributed in respect to their CBOT memberships, including interests in CBOT's electronic trading facility, as required by Section 2(b) of the 1992 Agreement regarding the division of CBOT membership into separate parts.

which has been one of the rights and privileges appurtenant to membership.[11]

*Transitional Proposal*

Just as adding 700 more persons to the floor of the CBOE would tax its physical space and resources beyond the breaking point, so too would the overnight elimination of some 700 exerciser members from the CBOE trading floor run the risk of disrupting its market. This result would follow because there suddenly would be 700 fewer persons on the floor acting either as market makers to provide liquidity and continuity for the CBOE market, or as brokers to represent customer orders. To prevent this risk of disruption to its market, CBOE believes that notwithstanding the extinguishment of the exercise right upon the implementation of changes described above, the CBOE must be able to allow CBOT members or their lessees who are already exerciser members of the CBOE to continue to have trading access to the CBOE for an interim period. The CBOE proposes to stay for an interim period the impact of the extinguishment of the exercise right on the trading access of those members of CBOT (or their delegates) who were exerciser members of the CBOE on a designated cut-off date, by permitting such persons to continue to be able to trade on the CBOE during this interim period.[12] For this purpose, the CBOE proposes the close of business on August 28, 2000, as the cut-off date for determining who would have the right to continue to have trading access to the CBOE during the interim period. CBOT members (or their delegates) who were exerciser members of CBOE in good standing on that date (''grandfathered exercisers'') would continue to be able to trade as members of the CBOE for the duration of the interim period, notwithstanding the implementation of any step of the CBOT restructuring or other change to its trading rules or procedures that has the effect of extinguishing the exercise right as described above. However, persons who were not effective exercisers on that cut-off date would not be permitted to exercise or have access to the CBOE trading floor during the interim period. In order to continue to have trading access to CBOE during this period, grandfathered exercisers would be required to maintain their status as full members of the CBOT or as holders of all of the stock distributed to them in respect of full CBOT memberships (or as the delegates of such members or stockholders) in accordance with the rules of CBOT. Among other things, this means that delegates would need to remain in compliance with the terms of their CBOT lease arrangements.

During the interim period when grandfathered exercisers would be allowed to have trading access on CBOE even after the exercise right has been extinguished, the CBOE would propose a permanent response to the situation presented by the extinguishment of the exercise right. This permanent response would address the CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades and would be fair to the 1,402 former members of the CBOT who will have lost their exercise rights. This interim period would extend for six months from the date the CBOE gives notice that the exercise right has been extinguished in accordance with the interpretation of Article Fifth(b) and the 1992 Agreement as described above, and for such additional period as may be needed to develop and implement a permanent response to the extinguishment of the exercise right. The permanent response would be subject to the approval of the CBOE members under Section 2.1 of the CBOE's Constitution, and to the approval of the Commission under Section 19(b)(1) of the Act.[13]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Act in general,[14] and in particular, with Section 6(b)(5) of the Act,[15] in that it is a reasonable interpretation of existing rules of the Exchange that is designed to promote just and equitable principles of trade, to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The CBOE has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 99 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

[11] Before or after the CBOT implements those steps of its restructuring or those changes to its trading rules or procedures that cause the exercise right to be extinguished in accordance with the rules interpretation reflected in this filing, the CBOE believes that it is possible that CBOT will take (or, unknown to the CBOE, may already have taken) other actions that raise independent questions concerning the continued existence of the exercise right that are not addressed in this filing. These steps may or may not be part of the restructuring, or the CBOT may further revise its proposed restructuring in ways that this filing does not address. If any such event makes it necessary for the CBOE to further interpret its rules applicable to the exercise right, CBOE proposes to do so pursuant to one or more separate filings (or amendments to this filing) under Section 19(b)(1) of the Act. 15 U.S.C. 78s(b)(1).

[12] In this respect, the decision to stay the effectiveness of what would otherwise result in a termination of trading access is analogous to the right of the CBOE under CBOE Rule 3.19 (formerly CBOE Rule 3.17) (''Obligation of Terminating Members''). This rule authorizes the CBOE, under circumstances when a membership would otherwise automatically terminate on account of a failure to satisfy certain requirements of membership, to permit the member ''to retain the member's status for such period of time as the Exchange deems reasonably necessary'' to provide time to cure the failure.

[13] 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

SR–CBOE–00–44 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29449 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43541; File No. SR–DTC–00–10]**

## Self-Regulatory Organizations; Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Combination of the Depository Trust Company's TradeSuite Institutional Trade Processing Services With Thomson-Financial ESG's Institutional Trade Processing Services

November 9, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 22, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC is DTC's proposal to combine its TradeSuite family of institutional trade-related services (''TradeSuite Business'') with the institutional trade processing services offered by Thomson Financial ESG (''ESG Business'')[2] in a proposed joint venture, the Global Joint Venture (''GJV''), between The Depository Trust & Clearing Corporation (''DTCC'')[3], Thomson Information Services Inc. (''TISI'')[4], and Interavia, A.G. (''IAG'').[5] The proposal is as follows:

- After receipt of all necessary regulatory approvals, DTC will transfer existing assets of the TradeSuite Business, TISI will transfer existing U.S. assets of the ESG Business, and IAG will transfer existing non-U.S. assets of the ESG Business to the GJV between DTCC, TISI, and IAG.
- Certain support functions and other services will be provided to the GJV by DTCC, DTC, and TISI pursuant to service contracts.
- The GJV will provide post-trade, presettlement related services, including execution notification, allocation, electronic trade confirmation (''ETC''), central matching, operational and standing databases (*i.e.*, trade enrichment), and communications between trading parties and their settlement agents.
- The GJV's governance arrangements will be designed to assure that the ''U.S. regulated aspects'' of the GJV's activities,[6] including the pricing structure for the fees to be charged to users of such services, will be subject to the control of users.
- The GJV will be operated on a for-profit basis. Fifty percent of any profits not retained by the GJV will be distributed to DTCC.[7]
- The GJV will provide its ETC service and its central matching service through its wholly owned subsidiary, the GJV Matching Services—US, LLC, which has applied for an exemption from registration as a clearing agency.[8]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[9]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The expansion of the global economy, the tremendous growth in transaction levels in both domestic and cross-border markets, and the emergence of electronic trading vehicles has resulted in dramatic increases in securities trading volumes. This growth in volume is beginning to constrain the capacity of financial institutions to process trades efficiently so that they settle on time. Operations professionals in both domestic and foreign securities markets have concluded that the current sequential and fragmented electronic trade confirmation/affirmation model must be made more efficient and that broader industry connectivity to electronic systems must be encouraged so that these systems will be used for the large number of cross-border transactions that still rely upon the telephone and telefax for the communication of trade and settlement information.[10]

According to DTC, the combination of the TradeSuite[11] and ESG Business[12] and the linking of their current services and customers could produce immediate benefits. For example, DTC estimates that 12% of institutional trades processed in TradeSuite are affirmed on trade date and that only 87% are affirmed by noon of T+2. By introducing allocations processed in the ESG Business' OASYS system to the TradeSuite Business' TradeMatch, a much larger percentage of trades can be affirmed earlier in the settlement cycle.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

[3] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation (''NSCC'').

[4] TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

[5] IAG is a Swiss corporate affiliate of TISI.

[6] The term ''U.S. regulated aspects'' of the GJV's activities refers to any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a ''qualified vendor'' as defined in New York Stock Exchange Rule 387(a)(5), in National Association of Securities Dealers Rule 11860(a)(5), and in similar rules of other self-regulatory organizations. Such activities, therefore, would include the GJV's proposed ETC and centralized matching services for institutional transactions settling in the U.S., including cross-border transactions between a U.S. broker-dealer and an institution located abroad.

[7] Profits distributed to DTCC that are not retained by DTCC will be available for rebate to the participants of DTCC's wholly-owned subsidiaries, DTC and NSCC subject to such determination by DTCC's Board of Directors.

[8] The Commission has stated that matching is a clearing agency function that requires an entity that performs matching to register as a clearing agency or obtain an exemption from registration as a clearing agency. However, an entity that only provides a matching services does not have to be subject to the full range of clearing agency regulation. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. In 1999, the Commission granted Thomson an an exemption from clearing agency registration to provide matching services. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. GJV Matching Services-US, LLC has applied for exemption from clearing agency registration from the Commission. Securities Exchange Act Release No. 43540 (November 9, 2000), [File No. 600–32].

[9] The Commission has modified the text of the summaries prepared by DTC.

[10] *See, e.g.,* Securities Industry Association Institutional Transaction Processing Committee White Paper (December 1, 1999).

[11] Generally, the TradeSuite Business consists of the following products: TradeMessage, TradeMatch, TradeSettle and TradeHub.

[12] Generally, the ESG Business consists of the following products: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

Earlier affirmation would allow broker-dealers and their institutional customers to identify and resolve the exceptions and potential fails much earlier in the settlement cycle.

In the longer term, the combination of TradeSuite's and ESG's systems development expertise and other resources would enable the proposed joint venture to develop and market globally a single integrated ''workflow'' approach to trade management for both domestic and cross-border transactions. This development would facilitate the industry's goal of achieving straight-through processing, which would help manage the tremendous growth in trading volumes and prepare for the transition to shorter settlement cycles.

In addition, the DTC resources to be transferred to the GJV or provided to the GJV pursuant to a services contract are for the most part resources that are already fully dedicated to the TradeSuite Business. Therefore, implementation of the subject proposal will not deprive DTC of resources needed for it to provide its other services in a safe and sound manner. Furthermore, all existing services of the TradeSuite and ESG Businesses will continue uninterrupted during and after the transfer to the GJV.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [13] and the rules and regulations thereunder applicable to DTC because the implementation of the subject proposal will facilitate the prompt and accurate clearance and settlement of institutional transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition. The proposed joint venture will serve members of the securities industry and will be governed by its users. DTCC (which itself is owned by, and whose board represents, users) will own 50.1% of the GJV Class A Interests and only Class A Interests will have the right to vote on matters relating to the U.S. regulated aspects of the GJV's activities that are submitted to Interestholders.[14] The GJV board of directors will be composed of eight Managers, seven of whom shall be voting Managers and one of whom, the President of the GJV, shall be a non-voting Manager. Of the seven voting Managers, two will be appointees of DTCC and may be DTCC directors or officers (''DTCC Board Representatives''). Two voting Managers will be appointed by TISI and IAG, acting jointly. The remaining three voting Managers will be representatives of the global securities industry, two of whom will be nominees of DTCC. Board decisions involving U.S. regulated aspects of the GJV's business will require the affirmative vote of at least one of the two DTCC Board Representatives. In addition, the approval of both Interestholders will be required for many significant matters.

The purpose of the joint venture will be to introduce significant efficiencies into trade processing by combining two existing businesses with complementary positions and strengths. The joint venture will combine these two businesses to offer the securities industry an integrated system for trade processing which will assist firms in dealing with unprecedented levels of securities trading. The joint venture will also be a positive response to the expected industry and regulatory mandate to reduce settlement cycles worldwide and thereby to reduce risk affecting the national clearance and settlement system.

The joint venture will cooperate with other post-trade presettlement processing systems in order to achieve interoperability.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposal from DTC participants or others have not yet been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to file No. SR–DTC–00–10 and should be submitted by December 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29448 Filed 11–16–00; 8:45 am]

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[13] 15 U.S.C. 78q–1.

[14] The GJV Class B Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV's profits attributable to its domestic business, will be owned 50% by DTCC, 45% by TISI, and 5% by IAG. The GJV Class C Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV profits attributable to its foreign business, will be owned 50% by DTCC and 50% by IAG.

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43535; File No. SR–NASD–00–65]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 10334 of the NASD Code of Arbitration Procedure

November 8, 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 November 3, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD Dispute Resolution has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Dispute Resolution is proposing to: (1) Amend Rule 10334 of the Association's Code of Arbitration Procedure (''Code'') to accelerate the expiration date of the Rule from August 1, 2002 to December 31, 2000; (2) to delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334; and (3) renumber Rules 10205 and 10332 accordingly. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

*10334. Procedures for Large and Complex Cases*

(a) through (g) Unchanged.

(h) Temporary Effectiveness.

This Rule shall remain in effect until [August 1, 2002] *December 31, 2000,* unless modified or extended prior thereto by the Board of Governors.

* * * * *

*10205. Schedule of Fees for Industry and Clearing Controversies*

(a) through (h) Unchanged.

[(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over $10,000,000.]

[(j)] *(i)* Schedule of Fees.

(Remainder unchanged).

* * * * *

*10332. Schedule of Fees for Customer Disputes*

[(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over $10,000,000.]

[(i)] *h* Schedule of Fees.

(Remainder unchanged).

* * * * *

**II. Self-Regulatory Organization's Statement of, the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution 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

Rule 10334 of the Code establishes certain optional procedures for handling and managing large and complex (''LAC'') cases, defined as those involving claims of $1 million or more. Specifically, the Rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the Rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The Rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the Rule were not available in other arbitration cases. In 1997, the NASD amended the Rule to make certain of its provisions voluntary, which had been mandatory. At the same time, the NASD extended the Rule for five years to provide enough time to determine whether parties would use the Rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the Rule. Parties elected to proceed under the Rule in only 43 of the 880 cases from May 2, 1995 until January 28, 1997 that were eligible for treatment under the Rule. The few parties who did elect to proceed under the Rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the Rule by the higher fees it required.

Since then, changes to the Code and to NASD Dispute Resolution practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Pre-hearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the Rule has decreased significantly from its already low 1997 level. Through July 31st of this year, parties have elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to discovery, arbitrator selection, and the hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the Rule are available under the Code without the higher fees required under the Rule, they elected not to continue to proceed under the Rule. Whatever the reason, no case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the Rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the Rule.

Therefore, given the lack of use of Rule 10334, and the fact that the primary benefits of the Rule are available under general Code procedures at less cost to parties, NASD Dispute Resolution believes that additional time is not needed to determine that the Rule should be sunset. Therefore, the proposed rule change would amend the Rule to accelerate its expiration date to December 31, 2000.

The proposed rule change would also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph

[3] 17 CFR 240.19b–4(f)(6).

(h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties and results in needless expenditure of NASD Dispute Resolution resources.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Dispute Resolution 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, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Association as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[5] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until December 31, 2000, more than 30 days from November 3, 2000, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–65 and should be submitted December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29444 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78o(b)(6).

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43536; File No. SR–NASD–00–48]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requiring Public Disclosure of Receipt of a Delisting Notice

November 9, 2000.

**I. Introduction**

On August 10, 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''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would require an issuer to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Notice of the proposed rule change appeared in the **Federal Register** on October 5, 2000.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

**II. Description of the Proposal**

Nasdaq proposes to amend Rule 4815(b) and IM 4120–2, ''Disclosure of Written Notice of Staff Determination,'' to require an issuer to make a public announcement through the news media disclosing the receipt of a written staff determination to prohibit continued listing requirements (''Staff Determination'') and the rule(s) upon which the Staff Determination was based. The proposal also requires the public announcement to be make as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Additionally, the proposal provides that if the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to made the public announcement by the time that the Listings Qualification Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

According to Nasdaq, the proposed rule change is designed to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements. Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. In this regard, Nasdaq proposes that the public announcement shall not only disclose the receipt of a Staff Determination, but shall also indicate the Marketplace Rule(s) upon which it was based.

Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43383 (September 28, 2000), 65 FR 59480.

Determination. Nasdaq believes this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive information in a timely manner. If an issuer fails to disclose the receipt of a Staff Determination, trading of its securities will be halted until the disclosure is made, even if the issuer appeals to the Listings Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time the Listing Qualification Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

## III. Discussion

The Commission finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[4] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[5] of the Act. Section 15A(b)(6)[6] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.

Specifically, the Commission finds that the proposal to amend NASD Rule 4815 to require that an issuer make a public announcement through the news media to disclose the receipt of a Staff Determination to prohibit continued listing of the issuer's securities as a result of the issuer's failure to comply with the continued listing requirements is consistent with Section 15A(b)(6)[7] because it will provide notice to investors that Nasdaq has determined to delist an issuer's securities for non-compliance with Nasdaq's continued listing requirements, and the Rules upon which the Staff Determination was based. Such information should serve to protect present and future investors in an issuer's securities by providing them with this information as promptly as possible, and not more than seven calendar days following the receipt of a Staff Determination for failure to comply with continued listing requirements. Nasdaq believes, and the Commission agrees, that requiring public announcement of this information as promptly as possible, but not more than seven calendar days from receipt of the Staff Determination, allows a reasonable timeframe for the issuer to prepare an announcement, while ensuring that investors receive the information in a timely manner. The Commission believes that investors should have the benefit of knowing that an issuer has failed to meet Nasdaq's continued listing requirements and the Rules upon which the Staff Determination is based, and therefore finds the provision that trading of an issuer's securities, if an issuer fails to disclose receipt of a Staff Determination, will be halted until the disclosure is made, even if the issuer appeals to the Listing Qualifications Panel, to be reasonable and consistent with the Act. Finally, the Commission believes that the proposal should benefit investors because it will ensure that all Nasdaq issuers publicly disclose the receipt of a Staff Determination in both a timely and uniform manner, as opposed to the current situation whereby some issuers voluntarily make the disclosure while others do not.

## IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),[8] in particular.

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–00–48), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29445 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43549; File No. SR–NASD–00–50]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of ''Public Offering'' for Purposes of Nasdaq's Shareholder Approval Rules

November 13, 2000.

On August 11, 2000, The National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Marker, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] a proposed rule change regarding the adoption of interpretive material defining ''Public Offering'' for purposes of Nasdaq's shareholder approval rules.[2] On October 4, 2000, the Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was noticed in the **Federal Register.**[4] On October 13, 2000, the NASD filed Amendment No. 2 to the proposed rule change.[5] No comments were submitted on the proposed rule change. This order approves the proposed rule change, as amended.

## I. Background

Nasdaq rules require shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a ''public offering,'' although that term is not defined in the rules. Recently, a number of issuers have inquired as to whether certain large, below-market offerings were

[1] 15 U.S.C. 78s(b)(1).

[2] The American Stock Exchange, Inc. filed a similar proposed rule change SR–Amex–00–46. *See* Securities Exchange Act Release No. 43419 (Oct. 6, 2000), 65 FR 61206 (Oct. 16, 2000).

[3] Amendment No. 1 changed the section under which the proposed rule change was filed from Section 19(b)(3) to Section 19(b)(2) of the Act and made other technical changes. *See* Letter from Edward Knight, Executive Vice President and Chief Legal Officer, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC (Oct. 2, 2000).

[4] Securities Exchange Act Release No. 43420 (Oct. 6, 2000), 65 FR 61011 (Oct. 13, 2000).

[5] Amendment No. 2 made a minor technical change to the interpretation. *See* Letter from Arnold P. Golub, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC (Oct. 11, 2000). Because the amendment is technical, it does not need to be published for comment.

''public offerings'' because the transactions, which were initiated pursuant to exceptions to the registration requirements, were registered with the Commission prior to closing the transactions.[6] Historically, for purposes of assessing the applicability of the shareholder approval rules, Nasdaq staff has interpreted ''public offering'' as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, Nasdaq staff does not consider a transaction to be a ''public offering'' for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described had limited distributions and, in some cases, the offerees were pre-determined by the issuer, Nasdaq believed that these transactions were not ''public offerings'' for purposes of the shareholder approval rules.

To help to ensure that all issuers understand how Nasdaq will determine whether a transaction is a ''public offering'' for purposes of the shareholder approval rules, Nasdaq has prepared the proposed Interpretative Material. Determinations as to whether a transaction is a ''public offering'' for purposes of these rules will be made based on the facts and circumstances surrounding each particular transaction. The proposed Interpretative Material identifies a number of factors that will be considered when determining whether an offering is a ''public offering,'' including the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution.

## II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[8] The Commission believes the Interpretative Material is designed to educate issuers and other interested parties as to how Nasdaq defines a ''public offering'' in order to ensure that issuers are aware as to which transactions require shareholder approval under the NASD's rules, thus promoting just and equitable principles of trade and protecting investors and the public interest.

*It Is Therefore ordered*, pursuant to Section 19(b)(2) of the Act,[9] that the proposal, SR–NASD–00–50, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29466 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[6] The Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43538; File No. SR–NYSE–00–39]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Arbitration Rules Regarding Pilot Program for Mediation and Administration Conferences

November 9, 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 September 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organizations's Statement of the Terms and Substance of the Proposed Rule Change

The purpose of extending and amending the pilot program for mediation is to continue to offer mediation as a way for parties to settle cases earlier with fewer costs. The administrative conference pilot, as extended and amended, will allow the arbitrators(s) to intervene early in the case to set deadlines and resolve preliminary issues. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

**Rule 638 Mediation**

*(a) Mediation Pending Arbitration*

*(1)* [(a)] A single mediation session of up to four hours will be conducted in all cases [not involving public customers] submitted for arbitration where the amount of the claim is [$500,000] *$250,000* or more.

*(2)* [(b)] The New York Stock Exchange will provide the parties with a mediator. The mediator's fee for the single mediation session shall be $500 and shall be paid by the New York Stock Exchange. If the parties select a mediator of their own choosing, from outside the list of proposed mediators, they shall be responsible for any difference in the mediator's fee. If the parties desire they can extend the mediation beyond the first session at their own expense.

*(3)* [(c)] Unless the parties agree on a mediator, the Director of Arbitration will send the parties a list of five proposed mediators together with the mediators's biographical information described in Rule 608. The parties shall have ten days to agree on a mediator from the list or chose their own mediator. If no agreement is reached, the Director of Arbitration will select a mediator from the list unless all the names on the list are objected to by the parties. In that instance, the Director of Arbitration will appoint a mediator from outside the list.

*(4)* [(d)] Unless otherwise agreed to by the parties, mediation shall not delay the arbitration.

*(5)* [(e)] The mediation shall be confidential and no record kept of the proceeding. The mediator will not be permitted to act as an arbitrator in the same case and the mediator shall not be called to testify in any proceeding regarding the mediation.

[(f) Mediation under this rule shall be available in all matters submitted to arbitration involving public customers where the amount of the claim is $500,000 or more, upon the consent of the parties. The mediator will be compensated under paragraph (b) of this rule.]

*(6)* [g] In all other matters submitted to arbitration, mediation shall be available upon the consent of the parties, at their own expense.

*(b) Mediation Prior to Arbitration*

*(1) If the parties agree, any matter eligible for arbitration under the Constitution and Rules of the New York Stock Exchange may be mediated at the Exchange. To begin mediation under*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*this paragraph, the parties must file with the Exchange an agreement to mediate.*

*(2) At the time of filing an agreement to mediate, a party shall pay a non-refundable filing fee to the Exchange as required for the filing of an arbitration for the same amount in dispute under Rule 629 (Schedule of Fees) unless the fee is waived by the Director of Arbitration. The parties are directly responsible for the payment of the mediator's fee.*

*(3) If the case does not settle after mediation, the non-refundable filing fee will be applied to the non-refundable filing fee if a party elects a commence arbitration.*

**Rule 639 Administrative Conferences**

In all cases where the amount of the claim is [$500,000] *$250,000* or more, the parties shall attend an administrative conference with the arbitrators. [The arbitrators will decide whether the conference is conducted by telephone or in person.] The Director of Arbitration will schedule the conference within [30] *90* days after the [answer is filed] *Director serves the Statement of Claim, unless all parties request that it be scheduled later. The administrative conference will be conducted by telephone with the chairperson presiding. In any claim involving a public customer, a public arbitrator will conduct the administrative conference, unless the public customer demands, in writing, a securities arbitrator. The chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference.*

At the conference, the Arbitrator(s) may establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the arbitration.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of amending the extending the pilot programs (Rules 638 and 639) is to continue to offer mediation as a way of parties to settle cases earlier with lower costs.[3] The administrative conference allows the arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. The Exchange is also proposing to amend both pilot programs to include a greater number of cases by lowering the threshold amount to $250,000 from $500,000.

*Mediation*

Since November of 1998, the Exchange has sponsored a pilot mediation program. Under the pilot (Rules 638), a single mediation session of up to four hours is conducted in all cases not involving public customers submitted for arbitration where the amount of the claim is $500,000 or more. The Exchange pays the mediator up to $500.00 for this single mediation session. There are no costs assessed to the parties unless they select a mediator whose rate is higher or if the parties agree to go beyond the single session. Of the cases mediated under this provision of the pilot, approximately 31 percent (15 of 48) have settled before arbitration. Early settlements reduce costs and provide a greater measure of party satisfaction.

Under the pilot, mediation is also available in cases involving public customers where the claim is $500,000 or more upon agreement of the parties. These cases also qualify for the Exchange's $500 incentive payment to the mediator. In all other cases, mediation is available at the parties' own expense. The Exchange, however, will provide the parties with a list of mediators, will assist in facilitating the parties' agreement to mediate and will make its conference room facilities available for the mediation.

To evaluate the pilot, the staff of the Exchange met with mediators and lawyers who participated in mediation under the pilot. Based on the evaluators' comments and the settlement rate, the Exchange is proposing to extend the pilot for two years, as amended.

To encourage greater use of mediation, the Exchange proposes to amend the mediation pilot program to include all cases within a lowered threshold of claims of $250,000 or more. Most commentators supported the pilot's provision that a single mediation session of up to four hours be conducted in all cases with claims of $250,000 or more. This process relieves the parties from having to suggest mediation because the Exchange rule provides for it. Many parties believe that the other side will view their suggestion to mediate as a sign of weakness. it also assists counsel in getting their clients to consider mediation by making it part of the arbitration process—with little or no cost to them.

As amended, all cases with claims of $250,000 or more will be included in the pilot. This includes cases involving public customers. The pilot's inclusion of customer cases may lead to more and earlier settlements. Under the present pilot, where the parties have elected to mediate, 78.9 percent (15 of 19) of the customer cases with claims over $500,000 have settled before arbitration.

Under the present pilot, a single mediation session of up to four hours is conducted. Mediation is a voluntary process and neither the Exchange nor the mediator can require a party to mediate. The mediation may last less than four hours or the parties may refuse to participate at all. The pilot's only requirement is that the Director of Arbitration arrange for the mediation. The Director will delegate to the Exchange's staff the tasks of sending the parties a list of mediators and selecting a mediator from the list if the parties do not agree to a mediator. If the parties object to all the names on the list, the Director will appoint a mediator from outside the list. Once the parties or the Director selects a mediator, the Director will schedule the mediation and advise the parties. The mediator may contact the parties to preliminarily discuss the case. The pilot does not require the parties to do anything they do not wish to, including exchange information or documents; and there is no required pre-mediation exchange of exhibits. The goal of scheduling mediation is to encourage the parties to try to resolve the dispute as quickly and efficiently as possible. Unless the parties otherwise agree, mediation will not delay the arbitration.

The Exchange will continue to pay the mediator's fee for one session, up to $500, in cases where the rule provides that a single mediation session is to be conducted. Many commentators noted

[3] The Commission approved the Exchange's mediation program and administrative conference rule on a two-year pilot basis through November 20, 2000. *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998). On October 31, 2000, the Exchange's current pilot programs for mediation and administrative conferences were extended for six months. *See* Securities Exchange Act Release No. 43496, (October 31, 2000).

that the Exchange's provision for a single mediation session and incentive payment of the mediator's fee, up to $500, is helpful in encouraging their clients to agree to try mediation. The average mediation settles or reaches an impasse after approximately two sessions.

The Exchange is also proposing to allow parties to mediate without first filing for arbitration. The current pilot only applies to cases already filed with the NYSE for arbitration. Allowing the parties to mediate prior to filing an arbitration may save the parties some costs of arbitration. The party requesting mediation will be required to pay a non-refundable filing fee. This fee will be based upon the filing fee required for arbitration under Rule 629 for claims of the same amount. If the case does not settle after mediation,the Exchange will apply the fee to the non-refundable filing fee for arbitration. The parties are also required to pay the mediator's fee and agree on how the fee will be shared. The parties' agreement to mediate will not toll the time limitation for submission of a claim to arbitration.

As under the original pilot, cases with claims for less than $250,000 may also be mediated when the parties agree. However, in these cases the parties are responsible for payment of the entire mediator's fee. During the pilot program, where the parties have agreed to mediate claims below $500,000, 76 percent (16 of 21) have settled.

*Administrative Conferences*

Since November of 1998, the pilot program has provided for an administrative conference with the parties and arbitrators in cases over $500,000. The conference allows the arbitrators to set deadlines early in the case and resolve preliminary issues with the aim of expediting the arbitration. To date, 124 administrative conferences have been conducted. Most commentators supported the administrative conference with certain changes. The Exchange is proposing to amend and extend the pilot for two years.

In order to expedite a greater number of claims, the Exchange is proposing to lower the threshold for administrative conferences from $500,000 to $250,000. the Exchange is also proposing that, by default, the chairperson of the panel conduct the conference by telephone. This will allow the staff to schedule the conference earlier because it will involve coordinating the schedules of fewer persons. In cases involving public customers, a public arbitrator will conduct the administrative conference unless the public customer requests, in writing, a securities arbitrator. The Chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference. Under the amended pilot, the Director of Arbitration will schedule the conference 90 days after service of the Statement of Claim, rather than 30 days after the answer is filed. The additional period of time is intended to permit the parties to frame the issues for the administrative conference. The administrative conference pilot does not affect the parties' right to request a pre-hearing conference to resolve discovery disputes and other preliminary matters under Rule 619.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [4] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition 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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 NYSE. All submissions should refer to File No. SR–NYSE–00–39 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–29467 Filed 11–16–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(6).

[5] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 3476]**

## Determination; Assistance to the National Democratic Alliance (NDA)

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2261) (the ''Act''), and section 1–201 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $3.0 million in FY 2000 funds made available under Chapter IV of Part II of the Act for assistance to the civilian wing of the Sudanese National Democratic Alliance.

This authorization shall be reported to Congress immediately and published in the **Federal Register**.

Dated: October 31, 2000.

**Madeline Albright,**

*Secretary of State.*

[FR Doc. 00–29520 Filed 11–16–00; 8:45 am]

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## DEPARTMENT OF STATE

### Bureau of Oceans, International Environmental and Scientific Affairs

**[Public Notice No. 3475]**

### Public Meeting To Discuss Preparations for Negotiations on an International Agreement Through the United Nations Environment Program on Persistent Organic Pollutants

**SUMMARY:** The United States Government, through an interagency working group chaired by the U.S. Department of State, is preparing for the fifth and final negotiations through the United Nations Environment Program (UNEP) on a global agreement to address the release of certain persistent organic pollutants (POPs). The final negotiating session is scheduled to take place in Johannesburg, South Africa, on December 4–9, 2000. The Department of State will host a public meeting for environmental non-governmental organizations (NGOs) in advance of this session to outline issues likely to arise in the context of the negotiations. The public meeting will take place on Tuesday, November 21, 2000, from 11:00 a.m. to 12:30 p.m. in Room 7835 of the U.S. Department of State, 2201 C Street NW, Washington, DC. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647-5947) their name, organization, date of birth and Social Security number by noon on Monday, November 20, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Dr. Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–736–4660, fax 202–647–5947, e-mail RicciardoneMD@state.gov.

**SUPPLEMENTARY INFORMATION:**

### The UNEP POPs Negotiations

The POPs treaty is the first global treaty to address in a comprehensive manner the risks to human health and the environment of chemicals and other pollutants. The treaty will in the first instance deal with twelve substances: aldrin, endrin, hexachlorobenzene, toxaphene, chlordane, dieldrin, heptachlor, mirex, DDT, PCBs, dioxins and furans. These substances fall into three categories: Pesticides, industrial chemicals, and unintended by-products of combustion and industrial processes.

These global negotiations are an ambitious undertaking, since they encompass a broad range of measures to address POPs of transboundary concern. These range from controls on production and use for commercial chemicals, controls on POPs wastes, and controls on by-products that come from combustion and industrial processes. For many countries, this will be the first time that these substances have been controlled, and the effects are likely to be far-reaching.

Since the U.S. and other developed countries have already taken actions on these chemicals, a major goal for the agreement is broad participation by developing countries and, consequently, meaningful reductions in the amount of pollutants that are released into the environment. A critical part of the agreement will be technical and financial assistance mechanisms to help developing countries effectively implement their obligations.

### Timetable and Point of Contact

The POPs Intergovernmental Negotiating Committee (INC) expects to complete its work at its fifth session in Johannesburg. In preparation for the fifth session of the INC, the State Department is preparing its position for the negotiation, and has scheduled a public meeting to be held on Tuesday, November 21, 2000 from 11:00 a.m. to 12:30 p.m. in Room 7835 of the U.S. Department of State. Members of the interagency working group who will participate in the proposed negotiation will provide an overview of U.S. preparations for the fifth session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about these negotiations, and have an opportunity to offer comments. Those organizations or individuals which cannot attend the meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: November 14, 2000.

**Bob Ford,**

*Deputy Director, Office of Environmental Policy, U.S. Department of State.*

[FR Doc. 00–29519 Filed 11–16–00; 8:45 am]

BILLING CODE 4710–06–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–176]**

### WTO Dispute Settlement Proceeding Regardin United States of America—Section 211 of the Department of Commerce Appropriations Act, 1999

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice of the establishment and composition of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO'') requested by the European Communities and their Member States (the ''EC''). The EC has asked that the panel examine whether section 211 of the ''Omnibus Appropriations Act of 1998'' [sic] is consistent with U.S. obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (''TRIPs Agreement''). The statutory provision to which the EC refers is section 211 of the Department of Commerce Appropriations Act, 1999, as included in Pub. L. 105–277 (''Section 211''). Section 211 concerns the registration or enforcement, by Cuban entities or their successors in interest, of trademarks, trade-names, or commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, without the consent of the previous owners of the trademarks, trade-names or commercial names.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by November 28, 2000, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Att: Section 211, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C., 20508.

**FOR FURTHER INFORMATION CONTACT:** L. Daniel Mullaney, Associate General Counsel, at (202) 395–3581.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on October 26, 2000, the WTO Director-General appointed the following persons to serve as panelists

in this dispute: H.E. Mr. Wade Armstrong, Chairman; Mr. François Dessemontet, Member; and Mr. Armand de Mestral, Member. This appointment was made pursuant to Article 8.7 of the WTO Dispute Settlement Understanding. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report detailing its findings and recommendations within six to nine months after it is established. USTR solicited comments from the public on the issues in this dispute in a **Federal Register** notice dated August 1, 2000 (65 FR 46999); those comments are on file at USTR and need not be resubmitted in reponse to this notice.

**Major Issues Raised and Legal Basis of the Complaint**

In is request for the establishment of a panel, the EC alleges that three substantive provisions of section 211 are inconsistent with the TRIPs Agreement:

1. The EC alleges that Section 211(a)(1) limits the right to register or renew trademarks, trade-names or commercial names at the United States Patent and Trademark Office, in violation of TRIPs Article 2.1, in conjunction with Article 6 quinquies A(1) of the Paris Convention for the Protection of Industrial Property (1967) (''Paris Convention''), and TRIPs Article 15.1. The EC alleges that Section 211(a)(1) does this by, in the case of trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government, requiring the consent of the original owner or his successor-in-interest of the trademark, trade-name, or commercial name.

2. The EC alleges that Section 211(a)(2)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate common law or registration rights asserted by designated nationals or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention, and TRIPs Article 16.1 (which require WTO Members to provide protection for well-known trademarks and for trade names). The EC also alleges that Section 211(a)(2) violates the TRIPs enforcement provisions, such as TRIPs Article 42, and the most favored nation and national treatment provisions of the TRIPs Agreement (TRIPs Articles 3.1, 2.1 (in conjunction with Article 2(1) of the Paris Convention), and 4).

3. Finally, the EC allegs that Section 211(b)—by providing that U.S. courts shall not recognize, enforce, or otherwise validate treaty rights asserted by designated nations or their successors in interest in trademarks, trade-names and commercial names that are substantially similar to trademarks, trade-names, or commercial names associated with businesses confiscated without compensation by the Cuban government (unless the original owner consents)—violates TRIPs Art. 2.1, in conjunction with Articles 6 bis (1) and 8 of the Paris Convention (requiring protection of well-known trademarks and of trade-names) and TRIPs Articles 3.1, 4, 16.1, and 42 (provisions concerning most favored nation treatment, national treatment, trademark rights conferred, and fair and equitable enforcement procedures).

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute or other matters related to this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding, the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–176, ''Section 211'') may be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant U.S. Trade Representative for Monitoring and Enforcement.*

[FR Doc. 00–29482 Filed 11–16–00; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2000–8252]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0012 and 2115–0518

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) U.S. Coast Guard Academy—Preliminary Application and Supplemental Forms and (2) International Oil Pollution Prevention Certificate. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.

**DATES:** Comments must reach the Coast Guard on or before January 16, 2001.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2000–8252], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains these public docket for this requests. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

### Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–8252], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

### Information Collection Request

*1. Title:* U.S. Coast Guard Academy—Preliminary Application and Supplemental Forms.

*OMB Control Number:* 2115–0012.

*Summary:* Any person who wishes to compete for an appointment as a Coast Guard Cadet must fill out a Preliminary Application and Supplemental Forms.

*Need:* 14 U.S.C. 211 authorizes the Superintendent of the U.S. Coast Guard Academy to ensure that qualified people have every opportunity to compete for appointments as cadets.

*Respondents:* Men and women between the ages of 17 and 22.

*Frequency:* As needed.

*Burden Estimate:* The estimated burden is 6,640 hours annually.

*2. Title:* International Oil Pollution Prevention Certificate.

*OMB Control Number:* 2115–0518.

*Summary:* The information collected aids in the prevention of pollution from ships. An International Oil Pollution Prevention Certificate and other records serve to verify vessels' compliance with certain international and domestic rules on shipping.

*Need:* 33 U.S.C. 1901–1915 require that domestic rules implement MARPOL 73/78.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion and every five years.

*Burden Estimate:* The estimated burden is 6,858 hours annually.

Dated: November 7, 2000.

**S.A. Richardson,**

*Acting, Director of Information and Technology.*

[FR Doc. 00–29422 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## High Density Traffic Airports; Slot Allocation and Transfer Method

**ACTION:** Statement of policy.

**SUMMARY:** This action explains the adoption and implementation of a temporary policy regarding the minimum slot usage requirement for slots and slot exemptions at LaGuardia Airport for the winter season. A recent increase in the total number of operations at the airport, largely as a result of recently enacted legislation liberalizing access to slot-controlled airports, has had a significant operational impact at the airport. This policy will assist carriers in addressing operational issues by allowing limited flexibility of the slot usage requirement.

**EFFECTIVE DATE:** Effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Lorelei D. Peter, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 5, 2000, the ''Wendell H Ford Aviation Investment and Reform act of the 21st Century'' (''AIR 21'') was enacted. Section 231 of AIR 21 significantly amends 49 U.S.C. § 41714 and created 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enable air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK); Chicago's O'Hare International Airport (O'Hare); and Washington, DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications. This policy statement addresses operations at LaGuardia as authorized under Order 2000–4–11 (LaGuardia—Exemptions for air service to small and nonhub airports—limited to aircraft with a seating capacity of less than 71) and Order 2000–4–10 (LaGuardia—Exemptions for new entrant and limited incumbent air carriers).

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that exemptions must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub in 1997 under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub and LaGuardia Airport during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification should state the communities and airport to be served, that the community was designated a small hub or nonhub as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service of the week of November 1, 1999. In addition, carriers must state the number of slot

exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. § 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes ''* * * to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20.'' Applications submitted under this provision must identify the airports to be served and the time requested.

In August, there were 55 additional exemption operations at LaGuardia authorized by the Department and allocated by the FAA Slot Administration Office under the provisions of AIR 21. The number of exemptions increased to 192 by mid-September and is expected to reach 274 by mid-November 2000.

Preliminary FAA air traffic operations data reported by OPSNET for September 2000 indicate that there were 1,163 average daily operations at LaGuardia. This is an increase of approximately 18 percent over the September 1999 level of 982 average daily operations. OPSNET reported that air traffic control delays of 15 minutes or more at LaGuardia increased to 10,515 for September 2000 from 3,108 in September 1999. The percentage of flights recorded with air traffic delays increased to 30.13 percent from 10.55 percent. In comparison, the second highest level of OPSNET reported air traffic delays was at Newark International Airport where the percentage of flights delayed showed a small decline to 8.5 percent in September 2000 compared to 8.7 percent in September 1999.

Since September, traffic management programs have been implemented regularly by the FAA Air Traffic Control System Command Center due to the increased volume of flights at the airport. Peak period demand routinely exceeds airport capacity. Delays of one hour or more are frequent, even during ideal weather conditions. Delays often increase to several hours in duration when adverse aviation weather reduces system capacity. Many airlines have operationally addressed the increased delays through various means, including waiting for the assigned clearance time, canceling flights, reaccommodating passengers on later flights, and adding flying time to account for increased operating times.

**Statement of Policy**

As a result of the additional operations and the impact described above on the operating environment at LaGuardia, the FAA finds that it is necessary to issue a temporary policy concerning the slot usage requirement for operations at LaGuardia. This change in policy is effective for the reporting periods of September/October and November/December in 2000, and January/February and March/April in 2001. At least 60 days prior to the end of the March/April reporting period, the FAA will evaluate operations at the airport and determine whether to extend this policy or take other action regarding slot usage.

In response to the large increase in volume-related delays, the FAA believes that airlines' decisions to cancel flights or otherwise make determinations on the operation of a flight should not be unduly influenced by the slot use or lose provision. While the cancellation of flights may be burdensome on both the airline passenger and the airline, advance planning should permit more efficient overall carrier operations while allowing passengers to be appropriately accommodated. One result of this temporary policy may be that fewer flights will operate, which may decrease delays for the remaining operations.

During the above stated months, the FAA will permit carriers operating slots or slot exemptions at LaGuardia to temporarily return to the FAA slots issued under the authority of 14 CFR part 93, subpart S, or exemption slots issued by the Department. This allows carriers to turn in slots and exemption slots in advance due to schedule planning or other decisions by the carriers without jeopardizing the permanent loss of the slot or slot exemption. Carriers that plan to return slots or slot exemptions must notify the FAA Slot Administration Office in advance and provide the slot withdrawal number, frequency and effective period of the return. Slots and slot exemptions returned to the FAA under this policy will not be allocated to any other carrier during the effective period and will revert automatically to the operator at the expiration of the period for which it was returned.

Carriers must contact the FAA Slot Administration Office concerning the date and frequency of restart-up should dates change. The Department has determined that a carrier returning slot exemptions under this policy will not need to recertify under Order 2000–4–10 and Order 2000–4–11 provided that all other certified conditions remain valid.

The FAA will treat a slot or slot exemption as used if the flight was scheduled but canceled for operational reasons and the slot would not otherwise have been subject to withdrawal. In the use or lose reports submitted to the FAA, carriers should indicate the flight was scheduled and, if appropriate, was canceled due to operational reasons. Carriers may report a slot or slot exemption as operated only if the flight was in fact operated. The FAA advises carriers to retain records of such cancellations should the FAA request additional documentation regarding the reason for the cancellation.

The FAA notes that when the slot usage requirements was last revised in 1992, the FAA specifically addressed the fact that adoption of the 80 percent usage threshold takes into account certain factors such as weather and operational delay. The adopted 80 percent usage requirement provides an appropriate balance that ensures limited slot resources are used and allows a reasonable level of nonoperation due to operational, scheduling or other reasons. The FAA recognizes, however, that the additional operations at LaGuardia as a result of AIR–21 slot exemptions have impacted operational performance and significantly increased air traffic delays at the airport beyond this historical rates. Consequently, the FAA believes that is necessary to implement this policy on a temporary basis through the April 2001 reporting period.

The FAA will also extend the due date for the September/October 2000 reporting period by three weeks in order to allow operators additional time to review their reports in light of this policy statement. This extension will apply to slots and slot exemptions at the four high density airports. Slot usage reports for the September/October 2000 reporting period will be due by December 5, 2000.

This temporary policy on nonoperation or return of slots and slot exemptions does not apply to the use or lose provisions for slots at other high density traffic airports unless the operator can provide clear and convincing evidence that a flight cancellation at that airport was directly related to the non-operation of a slot at LaGuardia, as described in this policy statement. This policy is not intended to provide blanket relief to any slot operator not meeting the minimum usage requirement due to reasons other than those discussed previously. It is also not intended to establish a basis for

the FAA to routinely consider delays and traffic management programs as grounds for a usage waiver. These factors were considered during the rulemaking process. Any waiver of the slot usage requirement at other high density airports for non-operation of flights at LaGuardia not covered by this policy will continue to be processed in accordance with 14 CFR Section 39.227.

Issued in Washington, DC, on November 13, 2000.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 00–29408 Filed 11–14–00; 3:09 pm]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Athens and Meigs Counties, Ohio

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

**ACTION:** Retraction of notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public of the retraction of the Notice of Intent to prepare an Environmental Impact Statement for a proposed highway project in Athens and Meigs Counties, Ohio, that was originally published in the **Federal Register** on October 19, 1999.

The FHWA determined environmental studies to document consultations between the Ohio Department of Transportation and FHWA were necessary. Based on these environmental studies, FHWA has determined that potentially significant impacts were avoided and the Finding Of No Significant Impact designation remains valid. An Environmental Impact Statement will not be prepared.

**FOR FURTHER INFORMATION, CONTACT:** Andreas Garnes, Rural Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6856.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 8, 2000.

**Andreas Garnes,**

*Rural Programs Engineer, Federal Highway Administration, Columbus, Ohio.*

[FR Doc. 00–29481 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. RSAC–96–1, Notice No. 23]**

### Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

**SUMMARY:** FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

**DATES:** The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, December 7, 2000.

**ADDRESSES:** The meeting of the RSAC will be held at the Wyndham Washington, DC Hotel in the Vista Ballroom, 1400 M Street, NW, Washington, DC 20005, (202) 429–1700. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Trish Paolella, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

**SUPPLEMENTAL INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, December 7, 2000. The meeting of the RSAC will be held at the Wyndham Hotel in the Vista Ballroom, 1400 M Street, NW, Washington, DC, 20005 (202) 429–1700. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 30 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will be briefed on the current status of activities of RSAC working groups and task forces responsible for carrying out tasks the RSAC has accepted involving blue signal protection, cab working conditions, and the definition of reportable ''train accident.''

There will be discussion about the possible tasking of the Training and Qualification of Safety Critical personnel and a briefing on the status of the North American Joint Positive Train Control Project. Also, if the draft Notice of Proposed Rulemaking for Cab Working Conditions is approved by the Working Group, the full committee may be requested to consider recommendations for FRA action on that issue. The committee may also be asked to consent to mail balloting with respect to future recommendations of the Locomotive Crashworthiness Working Group, following an update on the group's activities.

Informational status briefings concerning the Switching Operations Fatality Analysis task force efforts, the Grade Crossing Technical Working Group, the American Public Transportation Association's Passenger Rail Equipment Safety Standards and the Harriman Awards will be presented.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on November 13, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–29421 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2000–8292]**

### Sea Princess Trading, Inc. and the Sabine Transportation Company; Notice of Petition for a Declaratory Order

**AGENCY:** Maritime Administration, Transportation.

**ACTION:** Notice of petition.

**SUMMARY:** The Maritime Administration is seeking public comment on the

subject petition. Pursuant to 46 CFR 201.74, Sea Princess Trading, Inc. (Trading), the owner, and the Sabine Transportation Company (Sabine), the operator, by petition dated November 7, 2000, request a ruling that the SEA PRINCESS, a 37,500 DWT oil tanker, would if converted to a dry bulk carrier in a foreign shipyard be qualified to lift cargo reserved to privately owned United States-flag commercial vessels by section 901(b)(1) and 901b *et seq.*, of the Merchant Marine Act, 1936, as amended (Act); provided the United States Coast Guard ruled that the vessel so converted qualified for a coastwise endorsement to its document of registration pursuant to 46 App. U.S.C. 883 and 46 U.S.C. 12106.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than close of business (5 p.m. EST) December 1, 2000.

**ADDRESSES:** Your comments should refer to docket number MARAD–2000–8292. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may also submit them electronically via the internet at http://dmses.dot.gov/submit/. You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** You may call Frances M. Olsen, Acting Director, Office of Cargo Preference, (202) 366–4610. You may send mail to Frances M. Olsen, Acting Director, Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh St., S.W., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

## Comments

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How Can I Read the Comments Submitted by Other People?*

You may read the Petition and the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the four digit docket number shown at the beginning of this document. The docket number for this document is MARAD–2000–8292. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

## Petition Request

Pursuant to 46 CFR 201.74, Sea Princess Trading, Inc. (Trading), the owner, and the Sabine Transportation Company (Sabine), the operator, by petition dated November 7, 2000, request a ruling that the SEA PRINCESS, a 37,500 DWT oil tanker, would if converted to a dry bulk carrier in a foreign shipyard be qualified to lift cargo reserved to privately owned United States-flag commercial vessels by section 901(b)(1) and 901b *et seq.*, of the Merchant Marine Act, 1936, as amended (Act); provided the United States Coast Guard ruled that the vessel so converted qualified for a coast wise endorsement to its document of registration pursuant to 46 App. U.S.C. 883 and 46 U.S.C. 12106.

On April 15, 1994, the Maritime Administrator rendered an opinion that the tanker GOLDEN MONARCH when converted to a bulk carrier in Korea would not be eligible to lift preference cargo, although the Coast Guard had ruled that the MONARCH was eligible for a coastwise endorsement. Aquarius Marine Company Docket No. A–185. MARAD's decision was upheld by the United Stastaes Court of Appeals for the Second Circuit in *Aquarius* v. *Pena*, 64 F.3d 89 (2nd cir. 1985).

Trading and Sabine ask the Maritime Administration to essentially reverse its decision in the GOLDEN MONARCH case.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider all comments submitted in a timely fashion, and will take such action as may be deemed appropriate.

By Order of the Maritime Administrator.

Dated: November 14, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–29514 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–5734; Notice 2]**

### Decision That Nonconforming 1994–1998 Land Rover Discovery Multi-Purpose Passenger Vehicles Are Eligible for Importation

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

**ACTION:** Notice of decision by NHTSA that nonconforming 1994–1998 Land Rover Discovery multi-purpose passenger vehicles (MPVs) are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1994–1998 Land Rover Discovery MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1994–1998 Land Rover Discovery), and they are capable of being readily altered to conform to the standards.

**DATE:** This decision is effective as of the date of its publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether 1994–1998 Land Rover Discovery MPVs not originally manufactured to conform to all applicable Federal motor vehicle safety standards are eligible for importation into the United States. NHTSA published notice of the petition on June 3, 1999 (64 FR 29938) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Land Rover North America, Inc. (''Land Rover''), the United States representative of the Rover Group, the vehicles' manufacturer. In this comment, Land Rover identified several modifications beyond those specified in the petition that would be necessary to conform non-U.S. certified 1994–1998 Land Rover Discovery MPVs to all applicable Federal motor vehicle safety standards.

Land Rover stated that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are not equipped with a seat belt warning lamp, and that this component would have to be installed for the vehicles to comply with Standard No. 101, *Controls and Displays*. Land Rover also noted that in order to comply with Standard No. 101, the vehicles' instrument panel would have to be equipped with a means for adjusting the panel's illumination.

Land Rover also stated that side reflectors would have to be installed on the vehicles to comply with Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Additionally, Land Rover noted that the vehicles' driver's side rearview mirror would have to be replaced with a flat glass U.S.-model component to comply with Standard No. 111, *Rearview Mirrors.* Land Rover also stated that a transmission shift interlock and ''key in ignition'' warning system would have to be installed for the vehicles to comply with Standard No. 114, *Theft Protection.*

With respect to the requirements of Standard No. 208, *Occupant Crash Protection*, Land Rover observed that air bag systems are optional in some non-U.S. certified 1994–1998 Land Rover Discovery MPVs. As a consequence, Land Rover stated that some vehicles will require those systems (including sensors, warning lamps, air bags, air bag ECU, and warning harnesses) to be retrofitted, and that this may lead to quality control and subsequent reliability problems. Additionally, Land Rover noted that air bag labels must be molded into the front sun visors of non-U.S. certified 1994–1998 Land Rover Discovery MPVs. Land Rover additionally observed that prior to the 1997 model year, ALR/ELR seat belt retractors were not installed in the front and rear outboard seating positions of non-U.S. certified Land Rover Discovery MPVs.

Land Rover also stated that there are significant differences between U.S. certified and non-U.S. certified 1994–1998 Land Rover Discovery MPVs with respect to compliance with Standard No. 301, *Fuel System Integrity.* A key difference cited by Land Rover is the addition of a stamped steel stiffening saddle welded to the frame of U.S. certified models to stiffen the fuel tank enclosures so that they may withstand rear impact testing to determine compliance with the standard. Land Rover stated that ''this stamped steel frame reinforcement is welded in place by the chassis manufacturer while the frame is mounted in a precise welding jig to ensure proper alignment and straightness.'' Land Rover contended that because this reinforcement is not available through the manufacturer's parts system, the entire chassis on a non-U.S. certified model would have to be replaced to achieve compliance with the standard. Land Rover further stated that in addition to the frame stiffener, there is a ''unique rear cross-member and integrally welded rear tow hitch that must also be fitted'' on non-U.S. certified models to comply with Standard No. 301.

Additionally, Land Rover stated that because diesel powered versions of non-U.S. certified 1994–1998 Land Rover Discovery MPVs have never been certified for sale in the United States, ''the entire fuel system including [the] fuel tank assembly may not comply'' with Standard No. 301. Land Rover asserted that the petitioner must conduct certification testing to ensure that diesel powered models comply with the standard before they may be imported into the United States.

Land Rover also observed that gasoline powered non-U.S. certified 1994–1998 Land Rover Discovery MPVs are equipped with some fuel system components that differ from those on U.S. certified models. Because Standard No. 301 compliance tests apply to the entire fuel system, Land Rover contended that the entire fuel system on non-U.S. certified vehicles must be modified so that it is materially identical to the fuel system on the U.S.-certified version.

Land Rover also noted that a utility vehicle warning label must be affixed to the driver's sun visor of non-U.S. certified 1994–1998 Land Rover Discovery MPVs to meet the requirements of 49 CFR 575.105, *Vehicle Rollover.* Additionally, Land

Rover contended that the owners manual supplied with non-U.S. certified 1994–1998 Land Rover Discovery MPVs must be replaced with the version supplied with U.S. certified models, because that version contains several Federally required messages and warning statements.

Concluding its comments, Land Rover contended that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are ineligible for importation into the United States because those vehicles are equipped with a chassis that differs significantly from the one on their U.S.-certified counterparts, and that the chassis ''cannot be properly modified.''

NHTSA accorded J.K. an opportunity to respond to Land Rover's comments. In its response, J.K. stated, with respect to the Standard No. 101 compliance issues raised by Land Rover, that it will replace the entire instrument cluster during conversion with one that includes all U.S.-model parts and associated systems, including the seatbelt warning systems and adjustable instrument illumination control. With respect to the Standard 108 issue raised by Land Rover, J.K. stated that it will change the bumper ends in the conversion process, and that the U.S. model ends it will install are equipped with marker lights. J.K. additionally stated that all vehicles will be inspected for compliance with Standard No. 111 at the time of importation, and that U.S. model mirror systems will be installed if necessary during the conversion process. Similarly, J.K. stated that all vehicles will be inspected for compliance with Standard No. 114 at the time of importation, and that a transmission interlock switch, which incorporates the key warning micro-switch, will be added to vehicles lacking that device.

J.K. also stated that all vehicles will be inspected for compliance with Standard No. 208 at the time of importation, and that all parts necessary to achieve compliance with that standard will be added during the conversion process. J.K. noted that all parts necessary to conform the vehicles' air bag system to the standard are available through dealers or the original equipment manufacturer, including sensors, warning lamps, air bags, air bag ECU, and warning harnesses. J.K. also stated that air bag labels will be attached to the front sun visors during the conversion process, and that ALR/ELR seat belt retractors will be fitted in 1996 and earlier model year vehicles.

With regard to the Standard No. 301 compliance issues raised by Land Rover, J.K. stated that all frame modifications made by the manufacturer to achieve compliance with that standard can be accomplished in a similar manner during conversion, using a precise welding jig to ensure proper alignment and straightness during installation. Likewise, J.K. asserted that the rear cross-member and integrally welded rear tow hitch receiver modifications applied by the manufacturer can be accomplished during conversion. J.K. also stated that during conversion, all fuel system components will be replaced with U.S. model components to meet EPA requirements, and modified to the same material condition as those on the U.S. certified vehicle. J.K. also stated that all required manuals and labels are added during the conversion process.

NHTSA believes that J.K.'s response adequately addresses the issues that Land Rover has raised regarding the petition. NHTSA further notes that the modifications described by J.K. would not preclude non-U.S. certified 1994–1998 Land Rover Discovery MPVs from being found ''capable of being readily altered to comply with applicable motor vehicle safety standards.''

NHTSA has accordingly decided to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–338 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

### Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1994–1998 Land Rover Discovery MPVs that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards are substantially similar to 1994–1998 Land Rover Discovery MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety, Compliance.*

[FR Doc. 00–29420 Filed 11–16–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Financial Subsidiaries and Operating Subsidiaries. The OCC also gives notice that it has sent the information collection to OMB for review.

**DATES:** You should submit your comments to both OCC and the OMB Desk Officer by December 18, 2000.

**ADDRESSES:** You should send your comments to the Communications Division, Attention: 1557–0215, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0215), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Financial Subsidiaries and Operating Subsidiaries.

*OMB Number:* 1557–0215.

*Form Number:* None.

*Abstract:* This submission covers an existing regulation and involves no

change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 5 are located as follows:

12 CFR 5.24(d)(2)(ii)(G)—Conversion: An institution must identify all subsidiaries that will be retained following the conversion and provide information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to sections 5.34 or 5.39. The OCC will use the information to determine whether to grant the financial institution's request to convert to a national charter.

12 CFR 5.33(e)(3)(i) and (ii)—Business combinations: A national bank must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. A national bank proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to sections 5.34 or 5.39.

The OCC needs this information regarding the subsidiaries to be acquired to determine whether to approve the business combination. The OCC will use this information to confirm that the proposed activity is permissible for operating subsidiaries and to ensure that a bank proposing to conduct activities through a financial subsidiary satisfies relevant statutory criteria.

12 CFR 5.34—Operating subsidiaries: A national bank must file a notice or application to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary. The application or notice provides the OCC with needed information regarding the activities and location(s) of the operating subsidiaries. The OCC will review the information to determine whether proposed activities are legally permissible, to ensure that the proposal is consistent with safe and sound banking practices and OCC policy, and that it does not endanger the safety and soundness of the parent national banks.

12 CFR 5.35(f)(1) and (2)—Bank service companies: Under section 5.35(f)(1), a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC.

Under section 5.35(f)(2), a national bank that is ''well capitalized'' and ''well managed'' may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate OCC district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in section 5.34(e)(5)(v). The OCC will review after-the-fact notices to confirm the permissibility of the national bank's investment in the bank service company.

12 CFR 5.36(e)—Other equity investments—Non-controlling investments: A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in section 5.36(e)(2) by filing a written notice. The OCC will use the information provided in the notice to confirm that the national bank is well capitalized and well managed, and that the bank meets the requirements applicable to non-controlling investments.

12 CFR 5.39—Financial subsidiaries: A national must file a notice prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in sections 5.39(i)(1) and (2). The OCC will review this information to ensure that a proposal satisfies applicable statutory criteria.

*Type of Review:* Extension, without change, of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 587.

*Estimated Total Annual Responses:* 587.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 587 burden hours.

*OCC Contact:* Jessie Dunaway, Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Attention: 1557–0215, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

*OMB Desk Officer:* Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0215, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*Comments:* The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments regarding any aspect of these collections of information.

Dated: November 13, 2000.

**Stuart Feldstein,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. 00–29464 Filed 11–16–00; 8:45 am]

BILLING CODE 4810–33–P

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2001. Based on the latest review of costs, the new basic fee for a Treasury book-entry security transfer will be reduced $.02 for each transfer. Concurrent with Treasury's fee reduction, the Federal Reserve will be increasing the fee for the movement of funds by $.02. These changes will result in the combined fee for a Treasury security transfer of $.70. The combined fee is unchanged from CY 2000.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer will be $25.00, increasing $7.00 or 39%.

**EFFECTIVE DATE:** January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, Suite 3014, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–6358.

Diane M. Polowczuk, Government Securities Specialist (Financing), Bureau of the Public Debt, Room 510, 999 E Street NW., Washington, DC 20239–0001, telephone (202) 691–3550.

**SUPPLEMENTARY INFORMATION:** On October 1, 1985, the Department of the Treasury established a fee structure for

the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury will decrease its basic fee and increase the off-line surcharge from the levels currently in effect. Beginning January 2, 2001, the basic fee will be $.63 for each securities transfer and reversal sent and received, a 3% fee reduction per transfer. The current off-line surcharge of $18.00 will increase to $25.00, a 39% increase.

The basic transfer fee assessed to both sends and receives reflects stability of costs associated with the processing of a security transfer. The increased off-line surcharge reflects the additional costs associated with the processing of off-line security transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or for wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies on NBES. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System elsewhere in this issue of the **Federal Register**.

The following is the Treasury fee schedule that will take effect on January 2, 2001, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1] EFFECTIVE JANUARY 2, 2001

[In Dollars]

| Transfer type | Basic fee | Off-line surcharge | Funds [2] movement fee | Total fee |
|---|---|---|---|---|
| On-line transfer originated | .63 | .00 | .07 | .70 |
| On-line transfer received | .63 | .00 | .07 | .70 |
| On-line reversal transfer originated | .63 | .00 | .07 | .70 |
| On-line reversal transfer received | .63 | .00 | .07 | .70 |
| Off-line transfer originated | .63 | 25.00 | .07 | 25.70 |
| Off-line transfer received | .63 | 25.00 | .07 | 25.70 |
| Off-line account switch received | .63 | .00 | .07 | .70 |
| Off-line reversal transfer originated | .63 | 25.00 | .07 | 25.70 |
| Off-line reversal transfer received | .63 | 25.00 | .07 | 25.70 |

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

**Authority:** 31 CFR 357.45

Dated: November 9, 2000.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 00–29385 Filed 11–16–00; 8:45 am]

BILLING CODE 4810–35–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–04: OTS Nos. H–3683 and 00567]**

### Lawrence Financial Holdings, Inc., Ironton, OH; Approval of Conversion Application

Notice is hereby given that on November 13, 2000, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Lawrence Federal Savings Bank, Ironton, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: November 14, 2000.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 00–29457 Filed 11–16–00; 8:45 am]

BILLING CODE 6720–01–M

# Corrections

**Federal Register**

Vol. 65, No. 223

Friday, November 17, 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.

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2449]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

*Correction*

In notice document 00–28614 appearing on page 67009 in the issue of Wednesday, November 8, 2000, make the following correction:

On page 67009, in the second column, in the fifth line from the bottom, ''November 14, 2000'' should read ''November 24, 2000''.

[FR Doc. C0–28614 Filed 11–16–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Part 2510

**RIN 1210–AA48**

### Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

*Correction*

In proposed rule document 00–27044 beginning on page 64482 in the issue of Friday, October 27, 2000, make the following correction:

**§2510.3–40 [Corrected]**

On page 64498, in the second column in paragraph (h) in the second line, ''December 26, 2000'' should read ''[60 days from the date of publication in the **Federal Register** as a final regulation]''.

[FR Doc. C0–27044 Filed 11–16–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
November 17, 2000

# Part II

# Federal Communications Commission

47 CFR Parts 2, 25, and 27
Transfer of the 3650 Through 3700 MHz Band and the 4.9 GHz Band From Federal Government Use; Proposed Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 25, and 27

**[ET Docket No. 98–237 and WT Docket No. 00–32; FCC 00–363]**

### Transfer of the 3650 Through 3700 MHz Band and the 4.9 GHz Band From Federal Government Use

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to establish licensing and service rules for the assignment of fixed and mobile services licenses in the 3650 through 3700 MHz band. This document also seeks comments on whether technical requirements or other reasons justify licensing the band and the 4940 through 4990 MHz band at the same time. This action is intended to facilitate the provision of a broad range of services, including traditional voice telephony and new broadband, high-speed, data and video services, and to help foster the introduction of such services to rural and underserved areas of the United States.

**DATES:** Submit comments on or before December 18, 2000, and submit reply comments on or before January 16, 2001. Written comments by the public on the proposed information collections are due January 16, 2001. Written comments on the proposed information collections must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before March 19, 2001.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to *jboley@fcc.gov*, and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eli Johnson, 202–418–1310. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in ET Docket No. 98–237 and WT Docket No. 00–32, FCC 00–363, adopted October 12, 2000, and released October 24, 2000. The complete text of the Second NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C., and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street S.W., Washington, D.C. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

**Synopsis of the Second NPRM**

1. In this Second NPRM, the Commission proposes licensing and service rules for the assignment of fixed and mobile services licenses in the 3650 through 3700 MHz band to fixed and mobile (base stations) terrestrial services by competitive bidding. The Second NPRM also seeks comment on whether technical requirements or other reasons justify licensing the 4940 through 4990 MHz (4.9 GHz) band at the same time.

2. The 3600 through 3700 MHz band has been allocated for use by the Federal Government on a primary basis for radiolocation services. The associated First Report and Order adopted with the Second NPRM, allocates the 50 megahertz of spectrum in the 3650 through 3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. (*See* Notice of Proposed Rulemaking and Order in ET Docket No. 98–237, 64 FR 2462, January 14, 1999.)

3. The Commission is ''grandfathering'' existing fixed satellite service (FSS) earth stations in this band, and, for a limited time will accept new applications for FSS earth stations in the vicinity of these grandfathered sites to operate on a co-primary basis in the band. The Commission will also permit additional FSS earth station operations on a secondary basis. The Second NPRM proposes that both new and existing FSS earth stations be subject to part 25 of the Commission's Rules.

4. As discussed in paragraph 120 in the full text of the Second NPRM, the Commission proposes to assign terrestrial service licenses in this band pursuant to the Commission's part 1 competitive bidding rules. The Commission also proposes to license the 3650 through 3700 MHz band under part 27 of the Commission's Rules as modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum in the 3650 through 3700 band. (*See* the Proposed Rules portion of this FR Summary or Appendix E of the Second NPRM.) The Commission also seeks comment on the geographic area and spectrum blocks that should be used to license this spectrum. Further, as discussed in paragraphs 42 through 44 of the Second NPRM, the Commission seeks comment on whether technical requirements or other reasons justify licensing the 3650 through 3700 MHz and the 4.9 GHz bands at the same time. (*See* the Notice of Proposed Rulemaking in WT Docket 00–32, 65 FR 14230, March 16, 2000.)

5. The Commission, in paragraph 47 of the Second NPRM, proposes that licensees in the 3650 through 3700 MHz band be subject to the Universal Licensing System (ULS). ULS is the interactive licensing database developed by the Wireless Telecommunications Bureau to consolidate and replace eleven existing licensing systems used to process applications and grant licenses in the wireless services. License applications filed by part 27 licensees must be filed electronically via ULS.

6. The Commission, as indicated in paragraph 49 of the Second NPRM, seeks comment from the public in general concerning the proposals set forth in the Second NPRM. The Commission, however, specifically seeks comment from Indian Tribal governments on the proposals contained in the Second NPRM. The Commission believes that the proposals set forth in the Second NPRM have the potential to foster the development and, ultimately, the deployment of new technologies and services to many communities, including tribal communities. Thus, the Commission seeks comment both from Tribal governments and other interested parties on the potential for the spectrum proposals to serve the communications needs of tribal communities.

7. Paragraphs 50 through 56 of the Second NPRM consider regulatory status and flexible use of the 3650 through 3700 MHz band. In this section, the Commission proposes that applicants and licensees in this band not be required to describe their proposed services, but be required to indicate a regulatory status based on any services they choose to provide. Under this proposal, licensees who change the service they offer, such that it would change their regulatory status, must notify the Commission within 30 days of the change. Changes resulting in the discontinuance, reduction, or impairment of the existing service could

require a different time period for notification as governed by section 101.305 of the Commission's Rules. Paragraphs 57 through 60 of the Second NPRM address eligibility restrictions and spectrum aggregation limitations. Paragraphs 61 through 63 of the Second NPRM pertains to foreign ownership restrictions in the 3650 through 3700 MHz band.

8. Other issues discussed in the Second NPRM include geographic areas and spectrum blocks (paragraphs 64 through 71), license term and renewal expectancy (paragraphs 72 through 74), partitioning and disaggregation of licenses and the use of band managers (paragraphs 75 through 81), performance requirements (paragraphs 82 through 88), equal employment opportunity issues (paragraphs 89 through 90), technical rules (paragraphs 91 and 92), in-band interference control (paragraphs 93 through 109), adjacent band interference control (paragraphs 110 through 116), RF Safety (paragraphs 117 through 119), competitive bidding provisions for small businesses (paragraphs 120 through 127), and additional satellite issues (paragraphs 128 through 133).

**Initial Regulatory Flexibility Analysis**

9. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Second NPRM. The Commission requests written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Initial Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries.

10. Comments regarding the IRFA must be filed in accordance with the same filing deadlines as comments filed in this Second NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Second NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**Ex Parte Presentations**

11. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206((a).)

**Pleading Dates**

12. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 18, 2000, and reply comments on or before January 16, 2001. Comments and reply comments should be filed in ET Docket No. 98–237 and WT Docket No. 00–32. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, S.W., Washington, D.C. 20554, with a copy to Eli Johnson, Policy Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Washington, D.C. 20554.

13. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply.

14. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, D.C. 20054, (202) 857–3800.

**Ordering Clauses**

15. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel of Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat 1164, 5 U.S.C. 601 *et seq.* (1981).

16. Pursuant to sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332 (c)(7) the Second Notice of Proposed Rule Making is adopted.

**Initial Regulatory Flexibility Analysis**

17. This is a synopsis of the Initial Regulatory Flexibility Act Statement in this Second Notice of Proposed Rule Making (Second NPRM). The full text of the Initial Regulatory Flexibility Act Statement may be found in Appendix C of the full Second NPRM.

18. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. 5 U.S.C. 603 The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

*A. Need for, and Objectives of, the Proposed Rules*

19. The actions taken in this Second NPRM are intended to facilitate the provision of a broad range of services. The Commission believes the 3650 through 3700 MHz band may be used to foster the introduction of wireless services to rural areas of the United States and to develop new and more effective competition to existing wireline local exchange carriers by providing for an economical means to

offer competitive ''local loop'' or ''last-mile'' facilities.

*B. Legal Basis for Proposed Rules*

20. The proposed action is authorized under sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7).

*C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply*

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. The Commission estimates that 96 percent, or about 81,600, are small entities that may be affected by the proposed rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

23. The Commission has not developed a definition of small entities applicable to fixed satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with no more than $11.0 million in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.

24. The Commission must assign licenses for this spectrum by competitive bidding to satisfy the requirements of the Balanced Budget Act of 1997. The Commission has not yet determined how many licenses will be awarded. Moreover, the Commission does not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. The Commission therefore assumes that, for purposes of our evaluations and conclusions in the IRFA, all prospective licensees are small entities, as that term is defined by the SBA or our proposed small business definitions for terrestrial fixed and mobile services in the 3650 through 3700 MHz band.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

25. Applicants for licenses to provide terrestrial fixed and mobile services in the 3650 through 3700 MHz band will be required to submit short-form applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC Form 601, and other appropriate forms. The Commission invites comment on how these filing requirements can be modified to reduce the burden on small entities.

26. As proposed, all services, other than fixed satellite service earth stations, in the 3650 through 3700 MHz band would be governed by part 27 of the Commission's Rules, and, in certain instances, part 20. The proposals under consideration in this item include requiring commercial licensees to make showings that they are in compliance with construction requirements, file applications for license renewals and make certain other filings as required by the Communications Act. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

*E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof; for small entities.

28. The Second NPRM proposes the following small business definitions for bidders in auctions of licenses in the 3650 through 3700 MHz band: an ''entrepreneur'' would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''small business'' would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $15 million, and a ''very small business'' would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $3 million. In developing these definitions, the Commission considered the alternative of using only two small business definitions, as it did in the case of the 2.3 GHz Wireless Communications Service (WCS) and certain other services. However, the Commission believes that an additional third category of small businesses may be appropriate because the deployment of fixed wireless equipment in nearby spectrum bands suggests that entry costs may be lower than was the case for the 2.3 GHz WCS when it was licensed in 1997. Thus, very small businesses may now be better able to take advantage of bidding credits to acquire licenses and provide communications services.

29. The Commission, while proposing a requirement that fixed and mobile services applicants identify whether or not they seek to provide common carrier services, also proposes to allow these applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require these applicants to choose between common carrier and non-common carrier services. The Commission also proposes that fixed and mobile applicants and licensees in the 3650 through 3700 MHz band not be required to describe their proposed services, but be required to indicate a regulatory status based on any services they choose to provide. The Commission, however, particularly seeks comment on the effect of this flexible approach on possible investment in communications services and systems and more generally on technology development.

30. The Commission proposes that there be no restrictions on eligibility for fixed and mobile services licensees in

the 3650 through 3700 MHz and 4.9 GHz bands other than the alien ownership restrictions set forth in section 310 of the Communications Act. The Commission proposes that both common carrier and non-common carrier licensees in the 3650 through 3700 MHz band provide the alien ownership information requested in FCC Form 601, as well as amendments to FCC Form 602 to reflect any changes in foreign ownership information.

31. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, the Commission proposes certain provisions that will redound to the benefit of small entities. These special provisions include partitioning and spectrum disaggregation. These provisions will allow smaller entities to overcome entry barriers. In addition, the Commission seeks comment on whether it would be appropriate to license the 3650 through 3700 MHz band for fixed and mobile services using smaller geographical licensing areas. The use of smaller licensing areas could benefit small entities by reducing costs and build-out expenses. The Commission also seeks comment on different approaches to minimizing the burdens of interference management.

32. The regulatory burdens the Commission proposed to retain are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe we should adopt.

*F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

33. None.

**Paperwork Reduction Analysis**

34. This Second NPRM contains proposed and modified information collections. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 16, 2001. OMB comments are due March 19, 2001. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0926.

*Title:* The Transfer of the Bands from Federal Government Use: Notice of Proposed Rulemaking.

*Form No.:* FCC Forms 601, 602, 603, 604, 605.

*Type of Review:* Modified information collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 113 hours.

*Total Annual Cost Burden:* 0.

*Total Annual Burden:* 22,600 hours.

*Needs and Uses:* The various information reporting and verification requirements, and the prospective coordination requirement will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

**List of Subjects**

*47 CFR Part 2*

Radio.

*47 CFR Parts 25 and 27*

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25 and 27 as follows:

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

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

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

2. Add a new non-Federal Government footnote in numerical order to § 2.106, the Table of Frequency Allocations, to read as follows:

**§ 2.106 Table of Frequency Allocations.**

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NGXXX Fixed-satellite service systems that operate primarily outside the 3650 through 3700 MHz band may be authorized to perform space operations, such as, telemetry, tracking and telecommand operations in the band 3650 through 3700 MHz, provided the requirement in § 25.202(g)(1) of this chapter is satisfied.

* * * * *

## PART 25—SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 322, unless otherwise noted.

4. In § 25.202, add a new sentence at the end of paragraph (g) to read as follows:

**§ 25.202 Frequencies, frequency tolerance and emission limitations.**

* * * * *

(g) * * * Telemetry, tracking and telecommand functions for satellite service systems operating outside of the band 3650 through 3700 MHz may be authorized on a secondary basis in the 3650 through 3700 MHz band upon a particularized showing of need.

## PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

5. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

6. Add new paragraph (b)(3) to § 27.1 to read as follows:

**§ 27.1 Basis and purpose.**

* * * * *

(b) * * *

(3) 3650 through 3700 MHz band.

* * * * *

7. Add the following definition in alphabetical order to § 27.4 to read as follows:

**§ 27.4 Terms and definitions.**

* * * * *

*Grandfathered fixed satellite service earth station.* An earth station in the 3650 through 3700 MHz band is an earth station that is authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000.

* * * * *

8. Add new paragraph (c) to § 27.5 to read as follows:

**§ 27.5 Frequencies.**

* * * * *

(c) *3650 through 3700 MHz band.* The 3650 through 3700 MHz band is available for licensing pursuant to this part.

9. In § 27.14, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

**§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.**

* * * * *

(d) *3650 through 3700 MHz band.* (1) For a WCS licensee that offers fixed, point-to-point service, the construction of four permanent links per one million people in its licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

(2) For a WCS licensee that offers fixed, point-to-multipoint service, a demonstration of coverage of 20 percent of the population of its licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

(3) For a licensee that offers fixed satellite service, the construction of one earth station per licensed service area within the prescribed license term set forth in § 27.13 would constitute substantial service.

* * * * *

10. In § 27.50, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 27.50 Power limits.**

* * * * *

(c) The following power and antenna height limits apply to base and fixed stations operating in the 3650 through 3700 MHz band: Base and fixed stations must not exceed an effective radiated power of 1640 watts and an antenna height of 300 m height above average terrain, or its equivalent.

* * * * *

11. In § 27.53, redesignate paragraph (f) as paragraph (g) and add a new paragraph (f) to read as follows:

**§ 27.53 Emission limits.**

* * * * *

(f) Base and fixed service operations in the 3650 through 3700 MHz band are subject to the emission limits set forth in § 101.111 of this chapter.

* * * * *

12. Add new paragraph (c) to § 27.55 to read as follows:

**§ 27.55 Field strength limits.**

* * * * *

(c) 3650 through 3700 MHz band: 54 dBμV/m

13. Revise § 27.57 to read as follows:

**§ 27.57 International coordination.**

WCS licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of WCS bands. Operations in the border areas shall be subject to coordination with bordering countries and provide protection to non-U.S. operations in the appropriate frequency bands. In addition, satellite operations in WCS spectrum shall be subject to international satellite coordination procedures.

14. In § 27.58, add introductory text before paragraph (a) to read as follows:

**§ 27.58 Interference to MDS/ITFS receivers.**

The following rules concerning interference to Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') receivers apply only to WCS licensees in the 2305–2320 and 2345–2360 MHz bands:

* * * * *

15. Add a new § 27.61 to read as follows:

**§ 27.61 FS/FSS coordination procedure.**

Base and fixed service transmitters in the 3650 through 3700 MHz band that are located within 200 kilometers of a grandfathered fixed satellite service earth station must be coordinated prior to construction to reduce the potential for interference. The fixed station licensee must use the coordination procedures specified in § 101.21 of this chapter.

16. A new Subpart H is added to part 27 to read as follows:

## Subpart H—Competitive Bidding Procedures for the 3650 Through 3700 MHz Band

Sec.
27.701 3650 through 3700 MHz band subject to competitive bidding.
27.702 Designated entities.

## Subpart H—Competitive Bidding Procedures for the 3650 Through 3700 MHz Band

**§ 27.701 3650 through 3700 MHz band subject to competitive bidding.**

Mutually exclusive initial applications for terrestrial service licenses in the 3650 through 3700 MHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

**§ 27.702 Designated entities.**

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(5) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section. Where an applicant or licensee

is a consortium of small businesses (or very small businesses or entrepreneurs), the gross revenues of each small business (or very small business or entrepreneur) shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

[FR Doc. 00–28820 Filed 11–16–00; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Friday,
November 17, 2000

# Part III

# Department of Education

## Parent Training and Information Centers Program; Notice

## DEPARTMENT OF EDUCATION

### Parent Training and Information Centers Programs

**AGENCY:** Department of Education, Office of Special Education and Rehabilitative Services.

**ACTION:** Notice of proposed waiver.

**SUMMARY:** We are proposing to waive the requirements in EDGAR at 34 CFR 75.261 as applied to the Parent Training and Information Centers (PTIs) funded in FY 1999 and to authorize the Centers to carry out additional activities to support fifth year funding. Section 75.261 sets forth the conditions for extending a project period, including the general prohibition against extending projects that involve the obligation of additional Federal funds. We also propose to issue one year continuation awards in FY 2003 to 15 Parent Training and Information Centers project funded in FY 1999 in order to ensure the most efficient use of Federal funds. Only those grantees who currently hold the FY 1999 four year grant awards under the Parent Training and Information Centers projects would be eligible to apply for the funds. The Department is therefore soliciting public comment on the proposed waiver.

**DATES:** Comments must be received on December 18, 2000.

**ADDRESSES:** All comments concerning this proposal should be addressed to Debra Sturdivant or Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3527, Switzer Building, Washington, DC 20202–2641.

**FOR FURTHER INFORMATION CONTACT:** Debra Sturdivant, Telephone: (202) 205–8038, or Donna Fluke, Telephone: (202) 205–9161. If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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.

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding this proposed waiver.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed waiver. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed waiver in Room 3414, Switzer Building, 330 C Street SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### Background

On June 9, 1999, we issued a Notice Inviting Applications for New Awards under the Parent Training and Information Centers Program for Fiscal Year 1999. In this notice the Department announced that it would make fifteen awards of up to 48 months (four-year cycle awards) under 34 CFR 75.105(c)(3) and the Individuals with Disabilities Education Act (IDEA), which directed us to support the establishment of Parent Training and Information Centers that provide training and information to parents of children with disabilities to help improve results for their children.

The fifteen Centers affected by this notice include thirteen State awards and two other awards, one that focuses on the needs of Native Americans families, and one that focuses on military families. The grant period for these centers extends for four years until May 31, 2003.

### Reasons

Beginning with the awards made under this program in FY 2000, we have determined that five years provides a more appropriate funding cycle in order to foster more efficient use of Federal funds. On this basis, we believe that it makes the most programmatic sense to issue continuation awards to the existing fiscal year 1999 grantees in order to make their award cycle consistent with the fiscal year 2000 five-year cycle awards. However, to do so, we must waive the requirement in 34 CFR 75.261(c)(2), which prohibits project period extensions that involve the obligation of additional Federal funds. We are proposing this waiver at this time in order to give the affected grantees early notice of the availability of a fifth year of funding.

### Regulatory Flexibility Act Certification

We certify that the proposed waiver and the activities required to support fifth year funding would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this proposal are the fiscal year 1999 PTI Centers currently receiving Federal funds. However, the proposal would not have a significant economic impact on the Centers because the waiver and activities required to support fifth year funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposal would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

### Paperwork Reduction Act of 1980

This proposal has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

### Assessment of Educational Impact

We particularly request comments on whether this proposed waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

*http://ocfo.ed.gov/fedreg.htm*
*http://www.ed.gov/news.html*

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using 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 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*

(Catalog of Federal Domestic Assistance Number 84.328, Training and Information for Parents of Children with Disabilities.)

Dated: November 13, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–29451 Filed 11–16–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Friday,
November 17, 2000

# Part IV

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Final Rule**

**Record of Decision Concerning Grizzly Bear Recovery in the Bitterroot Ecosystem; Notice**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AE00**

# Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana

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

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), intend to restore the grizzly bear (*Ursus arctos*), a threatened species, into east-central Idaho and a portion of western Montana. We are designating grizzly bears to be reintroduced into the area described in this rule as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Selkirk and Cabinet-Yaak ecosystems in north Idaho, northeastern Washington, and northwestern Montana; the North Cascades ecosystem in northwestern Washington; the Northern Continental Divide ecosystem in Montana; and the Yellowstone ecosystem in Montana, Wyoming, and Idaho.

The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. We evaluated potential effects of this final rule in the ''Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem.'' This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of wilderness areas or surrounding lands.

**EFFECTIVE DATE:** This rule is effective December 18, 2000.

**ADDRESSES:** The complete file for this final rule is available for inspection, by appointment during normal business hours, at U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, at the above address, or telephone (406) 243–4903.

**SUPPLEMENTARY INFORMATION:**

## Background

### *1. Legislative*

The Endangered Species Act Amendments of 1982, Public Law 97–304, made significant changes to the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531–1540), including the creation of section 10(j), which provides for the designation of specific populations of listed species as ''experimental populations.'' Previous authorities in the Act permitted us to reintroduce a listed species for conservation and recovery purposes. However, local opposition to reintroduction efforts from parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a conservation and recovery tool.

Under section 10(j), the Secretary can designate reintroduced populations established outside the species' current range but within its historical range as ''experimental.'' Reintroduction of the experimental populations must further the conservation of the listed species. An experimental population must be separate geographically from nonexperimental populations of the same species. Designation of a population as experimental increases our flexibility and discretion in managing reintroduced listed species.

After designating a population as experimental under section 10(j) of the Act, the Secretary must determine whether such populations are essential, or nonessential, to the continued existence of the species. Regulatory restrictions may be considerably reduced under a nonessential experimental population designation, which is defined as being nonessential to the survival of the species. For the purposes of section 7 of the Act, we treat nonessential experimental populations that are located outside of the National Wildlife Refuge System or National Park System as if they are species proposed for listing. If a nonessential experimental population is located within such a refuge or park, the population is treated as if it is listed as a threatened species.

Section 7 provisions for Federal agency coordination have limited application to nonessential experimental populations found outside such refuges and parks. The two provisions that apply are: (1) Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species; and (2) section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species throughout its range. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Individual animals used in establishing an experimental population may be obtained from other populations if their removal is not likely to jeopardize the continued existence of the species and a permit has been issued in accordance with 50 CFR part 17.22 prior to their removal.

### *2. Biological*

This final experimental population rule addresses the grizzly bear, a threatened species that once ranged throughout most of western North America. An estimated 50,000 grizzly bears roamed the American West prior to European settlement (U.S. Fish and Wildlife Service 1993). However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 1,000–1,100 grizzly bears remain in a few isolated populations in Montana, Idaho, Wyoming, and Washington. This represents approximately 2 percent of their historic range in the lower 48 States (U.S. Fish and Wildlife Service 1993). The grizzly bear was listed as a threatened species in the lower 48 States under the Act in 1975 (40 FR 3173).

The natural history of grizzly bears and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, grizzly bears were considered a nuisance and threat to humans. Today, the grizzly bear's role as an important and necessary part of natural ecosystems is better understood and appreciated.

The grizzly bear was a widespread inhabitant of the Bitterroot Mountains in east-central Idaho and western Montana. Historic grizzly bear range includes national forest lands within and surrounding the Selway-Bitterroot Wilderness Area and Frank Church-River of No Return Wilderness Area on both sides of the Salmon River. The demise of the grizzly from the Bitterroot ecosystem was due to the actions of humans. Bears were actively killed for their fur, for sport, and to eliminate possible threats to humans and domestic livestock. The last verified death of a grizzly bear in the Bitterroot Mountains occurred in 1932, and the last tracks were observed in 1946 (Moore 1984, 1996). Although

occasional unverified reports of grizzly sightings persist in the ecosystem (Melquist 1985), no verified tracks or sightings have been documented in more than 50 years, and currently there is no evidence of any grizzly bears in the Bitterroot ecosystem (Melquist 1998).

**Recovery Efforts**

The reestablishment of a grizzly bear population in the Bitterroot ecosystem will increase the survival probabilities and further the conservation of the species in the lower 48 States. If the experimental population is lost, it will not diminish the survival probabilities for bears in other ecosystems. However, if the experimental population is successful, it will enhance grizzly bear survival and conservation over the long term by providing an additional population and thus adding a measure of security for the species.

The Grizzly Bear Recovery Plan, finalized in 1982 (U.S. Fish and Wildlife Service 1982), called for the evaluation of the Selway-Bitterroot ecosystem as a potential recovery area. Subsequently, an interagency team of grizzly bear scientists concluded the area provided suitable habitat and could support 200 to 400 grizzly bears (Servheen *et al.* 1991). In 1991, the Interagency Grizzly Bear Committee subsequently endorsed the Bitterroot ecosystem as a grizzly bear recovery area, and requested that we initiate measures to achieve recovery in the area.

In 1992, we organized a Technical Working Group to develop a Bitterroot ecosystem chapter to append to the Grizzly Bear Recovery Plan. This interagency group of biologists worked with a citizens' involvement group composed of local residents and agency personnel to draft a recovery plan chapter. Public comments, including those from local communities in central Idaho and western Montana, were integrated into the final chapter. We revised the Grizzly Bear Recovery Plan in 1993 (U.S. Fish and Wildlife Service 1993) and later produced the Bitterroot Ecosystem Recovery Plan Chapter (Chapter) as an appendix (U.S. Fish and Wildlife Service 1996). This Chapter called for the reintroduction of a small number of grizzly bears into the Bitterroot ecosystem as an experimental, nonessential population under section 10(j) of the Act and the preparation of a special rule and an Environmental Impact Statement (EIS) on this proposal. By establishing a nonessential experimental population, more flexible management practices may be implemented to address potential negative impacts or concerns regarding the recovery. The Chapter identified a tentative long-term recovery objective of approximately 280 grizzly bears for the Bitterroot ecosystem.

Planning for the recovery of grizzly bears into the Bitterroot ecosystem of east-central Idaho and western Montana was initiated in 1993, when the agencies of the Interagency Grizzly Bear Committee requested that an EIS be prepared. We then formed and funded an interagency team to prepare the EIS in 1995. The team included our specialists and those from the Forest Service, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe. The Grizzly Bear EIS program for the Bitterroot ecosystem emphasized public participation from the outset.

We developed a public participation and interagency coordination program to identify issues and alternatives to be considered in the EIS process. We published a Notice of Intent (NOI) concerning grizzly bear recovery in the Bitterroot ecosystem in the **Federal Register** on January 9, 1995 (60 FR 2399). The notice was furnished as required by National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain input from other agencies and the public on the scope of issues to be addressed in the EIS. This NOI asked the public to identify issues that should be addressed in the Draft EIS. A few days earlier, we issued a news release announcing the beginning of the NEPA process and the start of an EIS on grizzly bear recovery to the Bitterroot ecosystem.

Eight preliminary issues were identified in March 1995 from scoping meetings for the Chapter and the NOI to prepare an EIS. Three preliminary alternatives also were identified and published in a Scoping of Issues and Alternatives brochure, which was mailed to 1,100 people and distributed at 7 open houses. The brochure gave background information, described the purpose and need of the proposed action, listed preliminary issues and alternatives, and explained how to become involved in the EIS process. We asked interested parties to identify relevant issues and alternatives related to grizzly bear reintroduction into the Bitterroot ecosystem for the analysis. On June 5, 1995, we published a notice in the **Federal Register** initiating the formal scoping process with a 45-day comment period (60 FR 29708). We sent a news release to the print, radio, and television media in western Montana and Idaho on June 26, 1995, announcing the dates and locations for public open houses. We initiated public scoping of issues by mailing a brochure detailing the EIS process.

From July 5 to 11, 1995, we held seven public scoping sessions in the form of open houses in Grangeville, Orofino, and Boise, Idaho; Missoula, Helena, and Hamilton, Montana; and in Salt Lake City, Utah. At the open houses, people could watch a 5-minute introductory video about the proposed action of reintroducing a nonessential experimental population, and representatives of the Service, the Forest Service, and State fish and wildlife agencies were available to discuss grizzly bears, their recovery, and the EIS process. Those attending the open houses received copies of the issue and alternative scoping brochure and the question-and-answer booklet. We encouraged them to leave written comments with agency personnel or mail their comments later. Verbal comments or questions were also heard and responded to by the agency representatives, but verbal testimony was not formally recorded. More than 300 people attended these scoping sessions and offered comments on the proposal, the preliminary issues, and alternatives, and voiced their opinions on grizzly bears and reintroduction. We extended the scoping comment period for 30 days (from July 20 to August 21, 1995). On July 25, we provided a press release to local and national media to announce the extension. This extension was requested by numerous public interests with varied opinions on this complex topic.

We solicited written public comments on issues and alternatives at the open houses and through the media. In response, we received more than 3,300 written comments from individuals, organizations, and government agencies. These comments arrived in more than 565 letters, open house meeting notes, 6 petitions, and 6 form letters or postcards. Strong polarization of concerns regarding grizzly bear management typified the public comments. Approximately 80 percent of written responses were from residents of counties in Montana and Idaho adjacent to the proposed reintroduction area. Major concerns raised included public safety, impacts of grizzly bears on existing land uses, travel corridors and linkages, nuisance bears and their control, and depredation by bears on domestic livestock and native ungulates.

We continued public involvement and outreach activities in 1995 and began to prepare the EIS. The Bitterroot Ecosystem Chapter—Supplement to the Grizzly Bear Recovery Plan was finalized and signed on September 11, 1996. The EIS Team continued to follow

the NEPA process to prepare the Draft EIS. The team completed the Draft EIS in August 1996, and released it to us and then to agency partners for internal review and comment. Comments were incorporated, and we reviewed the final draft in February 1997. We incorporated comments from the final review and completed the Draft EIS in June 1997 (U.S. Fish and Wildlife Service 1997).

We released the Draft EIS and proposed special rule for public review and comment on July 1, 1997. The proposed rule, ''Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana'' was then published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). Comments were accepted through September 30, 1997. We then extended the comment period to November 1, 1997, based on numerous requests for more time to prepare responses. Following a request from a member of the Idaho congressional delegation, we extended the comment period a second time to December 1, 1997.

During October 1997, we held public hearings/open houses in seven communities on the perimeter of the Bitterroot area to gather public comments on the Draft EIS and proposed rule. Approximately 1,400 people attended these hearings, and 293 individuals testified. The Salmon and Hamilton hearings both had more people signed up to speak than time allowed. The dates and locations for the public hearings were Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community and State leaders, and interest groups in communities around the perimeter of the proposed recovery area. The Draft EIS, the Summary of the Draft EIS, and the Special Rule were all published on our web site at http://www.r6/fws/gov/endspp/grizzly.

We received comments on the two draft documents from more than 24,000 individuals, organizations, and government agencies. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. Ten petitions were received with more than 21,000 signatures. Fifteen form letters were identified. This degree of interest from the public indicates the strong feelings people have about the possibility of grizzly bear recovery in the Bitterroot ecosystem.

An analysis of the public comments on the Draft EIS and proposed rule was performed by an interagency team of 14 employees from our agency and the U.S. Forest Service (Content Analysis Team) in December 1997 and January 1998. The system used to analyze comments was objective, reliable, and traceable. We prepared a detailed summary report, ''Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem'' and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

The major issues raised by the public included recovery area boundaries; bear sources; designation of experimental nonessential population; the Endangered Species Act; restrictions on use of public lands; local control; best available science; the grizzly bear as a missing component of the ecosystem; what is a viable grizzly population; population corridor linkages; range requirements of the grizzly; effects to the grizzly (genetics, disease, bear safety, adequate food); ecosystem protection; effects of grizzlies on human health and safety; effects of grizzlies on livestock and pets; effects of grizzlies on big game species and hunting opportunities; effects of grizzlies on recreational opportunities and public access; effects on local economy (jobs); and the need for education. Issues raised during public comment on the Draft EIS were similar to the issues identified during public scoping.

The Content Analysis Team briefed the EIS Team regarding the results of the Draft EIS comment analysis in February 1998. The EIS Team met numerous times to thoroughly review the content analysis reports and original comment letters. They identified significant issues and, through the NEPA process, discussed and decided on necessary revisions to the Draft EIS and proposed rule to be responsive to public comment. During 1998, the EIS Team prepared the Final EIS and revised the special rule. In early 1999, we began our internal review of the draft final EIS and the draft final rule.

We released the Final EIS on grizzly bear recovery in the Bitterroot ecosystem on March 24, 2000. Chapter 5 of the Final EIS contains a detailed review of public comments on the Draft EIS, including comments on the proposed rule, and the Service's response. The Final EIS considers six alternatives: (1) Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management (Preferred Alternative); (1A) Restoration of Grizzly Bears as a Nonessential Experimental Population with Service Management; (2) Natural Recovery—The No Action Alternative; (3) No Grizzly Bear Alternative; (4) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Habitat Restoration; and (4A) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Service Management. All comments on the Final EIS received from the public during the 30-day public review period were considered prior to preparation of the Record of Decision.

On November 13, 2000, the Service signed the Record of Decision on the Final EIS, and selected the Preferred Alternative (Alternative 1 in the Final EIS) for implementation (see following document in this section of the **Federal Register**). This alternative is the Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management.

**Experimental/Reintroduction Site**

We intend to restore grizzly bears into the Bitterroot ecosystem of east-central Idaho in the Selway-Bitterroot and Frank Church-River of No Return Wilderness Areas on Federal lands managed by the Forest Service. The Bitterroot location was selected as a site for an experimental population of grizzly bears based on several factors. The area known as the Bitterroot ecosystem is centered around the federally designated Wilderness Areas of central Idaho, while a small portion extends eastward over the crest of the Bitterroot Mountains into Montana. It includes about 67,526 square kilometers (26,072 square miles) of contiguous national forest lands in central Idaho and western Montana. These include portions of the Bitterroot, Boise, Salmon/Challis, Clearwater, Nez Perce, Payette, Sawtooth, and Panhandle National Forests in Idaho, and the Bitterroot and Lolo National Forests in western Montana. The core of the ecosystem contains three designated wilderness areas including the Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. These areas provide approximately 15,793 square kilometers (6,098 square miles) of grizzly bear habitat. We plan to reintroduce grizzly bears only into the Selway-Bitterroot Wilderness Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. We will identify specific release sites that have high-quality bear habitat and low likelihood of human encounters.

There is no documentation that grizzly bears from northwestern Montana have moved into central Idaho. There is no evidence of any grizzly bears in the Experimental Population Area, thus there is no evidence of an existing grizzly bear population in the Experimental Population Area. In an effort to create a definition of a population for use in determining the feasibility of experimental population status for the Bitterroot ecosystem, we solicited input from 54 scientists familiar with bear populations. Thirty-seven scientists responded, and we adopted a definition. The definition of a grizzly bear population, as used in the Final EIS to define a minimal existing grizzly bear population in the Bitterroot, follows: ''A grizzly bear population is defined by verified evidence within the previous six years, consisting of photos within the area, verified tracks and/or sightings by reputable scientists or agency personnel, of at least two different female grizzly bears with young or one female seen with different litters in two different years in an area geographically distinct (separate) from other grizzly bear populations. Verifiable evidence of females with young, to be geographically distinct (separate), would have to occur greater than 10 miles (U.S. Fish and Wildlife Service 1993, page 171) from the nearest non-experimental grizzly bear population recovery zone boundary.'' Research data from the Cabinet-Yaak ecosystem indicates the average home range size of an adult female grizzly bear, when converted to a circle, has a radius of 10 miles (Kasworm and Servheen 1995).

The term ''current range,'' as it is used in this rule, refers to the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones (U.S. Fish and Wildlife Service 1993, page 171). The term ''geographically separate,'' as it is used in this rule, means that the Experimental Population Area and the recovery zone boundary of any existing grizzly bear population are separated by more than 10 miles.

The Bitterroot Experimental Population Area is outside the current range but within the historic range of the grizzly bear. The Bitterroot Experimental Population Area is greater than 10 miles from any recovery zone boundary of any existing grizzly bear population. Thus, the Service has determined that the east-central Idaho reintroduction area is consistent with provisions of section 10(j) of the Act; specifically, that experimental grizzly bears must be geographically separate from other, nonexperimental populations. Grizzlies dispersing into areas outside of the Experimental Population Area will receive all the protections of a threatened species under the Act. Although the Service has determined that there is no existing grizzly bear population in the Experimental Population Area, we will continue to monitor for the presence of any grizzly bears naturally occurring in the area, and evaluate any new reports of sightings from the area.

**Reintroduction Protocol**

We will undertake the grizzly bear recovery project in the Bitterroot ecosystem in cooperation with the U.S. Forest Service, other Federal agencies, the States of Idaho and Montana, the Nez Perce Tribe, and entities of the Canadian Provincial government. We will also enter into agreements with the appropriate Canadian Provincial government agencies to obtain grizzly bears.

Grizzly bears (*Ursus arctos*) for this reintroduction will be obtained from Canadian and U.S. grizzly populations with permission from the Canadian Provincial governments and concurrence from the appropriate State officials. Grizzly bears can be taken by authorized State, Federal, and tribal authorities for scientific or research purposes under the authorities granted by 50 CFR 17.40.

The Bitterroot ecosystem recovery program proposes moving a minimum of 25 grizzly bears of both sexes over a 5-year period from areas in Canada (in cooperation with Canadian authorities) and the United States that presently have populations of grizzly bears living in habitats that are similar to those found in the Bitterroot ecosystem. We will reintroduce only bears with no history of conflict with humans or livestock. We will capture and reintroduce bears at the time of year optimal to their survival. This process will likely occur when grizzly bear food supplies in the Bitterroot ecosystem are optimum. We plan to transport bears to east-central Idaho, provide any necessary veterinary care, and fit them with radio collars in order to monitor them by the use of radiotelemetry. We will determine the movements of individual grizzly bears and how they use their habitat, and keep the public informed of general bear locations and recovery efforts. We will release bears close enough to each other to create a ''colony'' or population of bears, providing the basis from which they will successfully reproduce and expand in numbers.

Grizzly bears are common in western Canada (10,000 to 11,000 in British Columbia) and Alaska (an estimated 30,000 to 35,000). An estimated minimum of 325 grizzly bears exist in the Northern Continental Divide ecosystem in northwestern Montana, and an estimated minimum of 328 exist in the Yellowstone ecosystem (1998 estimates per Grizzly Bear Recovery Plan criteria (U.S. Fish and Wildlife Service 1993)). The Final EIS analysis indicates no significant adverse impact to source populations from removal of grizzly bears for reintroduction to the Bitterroot ecosystem (U.S. Fish and Wildlife Service 2000), i.e., no significant adverse biological impact is expected from the removal of 10–15 grizzly bears from the British Columbia population over a 5-year period, and no significant adverse biological impact is expected from the removal of 10–15 grizzly bears from the Northern Continental Divide and/or Yellowstone ecosystem populations over a 5-year period. Such removals will be from areas that are outside the recovery zone, and not within 10 miles of the recovery zone line of either ecosystem. Under 50 CFR 17.80(b), the term ''nonessential experimental population'' means an experimental population whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild. The Service finds that grizzly bears to be used in the reintroduction effort meet the definition of ''nonessential'' because the loss of the reintroduced grizzlies is not likely to appreciably reduce the likelihood of survival of the species in the wild.

We will continue to ask private landowners and agency personnel in or around the Bitterroot ecosystem to immediately report any grizzly bear observations to us or to other authorized agencies. We will also conduct an extensive public information and education program. Public cooperation will be encouraged to ensure close monitoring of the grizzly bears and quick resolution of any conflicts that might arise. Specific information on grizzly bear reintroduction procedures can be found in Appendix 6, ''Scientific Techniques for the Reintroduction of Grizzly Bears,'' in the Final EIS.

**Status of Reintroduced Population**

In accordance with section 10(j) of the Act, this rule designates grizzly bears reintroduced to the Bitterroot ecosystem as a nonessential experimental population. After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a nonessential experimental animal. The primary reasons for this designation are the biological status of the grizzly and the need for

management flexibility to achieve reintroduction goals. Such designation will allow these grizzly bears to be treated as a species proposed for listing for the purposes of section 7 of the Act. This designation allows us to establish a more flexible and less restrictive special rule, rather than applying the general prohibitions of the Act that otherwise apply to threatened species.

We find that protective measures and management practices under this final rule are necessary and advisable for the conservation of the grizzly. We also find that nonessential experimental status is appropriate for grizzly bears taken from wild populations and released into the Bitterroot ecosystem of east-central Idaho. Formal section 7 consultation will not be required for any proposed U.S. Forest Service activity in the Bitterroot ecosystem as a result of the experimental reintroduction of bears, and the requirements of section 7(a)(2) will not apply because there are no National Wildlife Refuges or National Parks within the Bitterroot Experimental Population Area. However, because nonessential experimental grizzly bears will be treated as a species proposed for listing, the conferencing requirements under section 7(a)(4) will apply. Presently, we envision no conflicts with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed in a manner compatible for grizzly bears and other wildlife.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. However, some risks to grizzly recovery are associated with take of grizzlies resulting from other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high-speed vehicular traffic. Hunting, trapping, and USDA Wildlife Services programs are prohibited or strictly regulated by State and Federal law and policy. Very few paved or unpaved roads are in the reintroduction area or immediately outside of it. The unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, should encounter vehicles and humans infrequently. In accordance with existing labeling, the use of toxicants lethal to grizzlies is prohibited. Overall, the possible risks and threats that could impact the success of the recovery effort are thought to be minimal.

**Location of the Experimental Population Area**

The Bitterroot Grizzly Bear Experimental Population Area includes most of east-central Idaho and part of western Montana (see map attached to rule). This approximately 65,113-square-kilometer area (25,140-square-mile area) will include the area bounded by U.S. Highway 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis, to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana. Much of the Experimental Population Area has high-quality bear habitat with low likelihood of conflicts between grizzly bears and humans.

The proposed release site for restoring grizzly bears into east-central Idaho is on national forest land in the Selway-Bitterroot Wilderness Area. The Bitterroot Grizzly Bear Recovery Area (Recovery Area) consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (approximately 14,983 square kilometers; 5,785 square miles) (see map attached to rule). The Recovery Area is located within the Experimental Population Area, and is the area where grizzly bear recovery will be emphasized. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Citizen Management Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this special rule to change the definition of the Recovery Area.

**Management of the Reintroduced Population**

This special rule establishes a 15-member Citizen Management Committee (Committee) to facilitate recovery of the experimental grizzly bear population in the Bitterroot ecosystem. The Committee will make recommendations to the land and wildlife management agencies that the Committee believes will lead to recovery of the grizzly bear in the Bitterroot ecosystem. Decisions on and implementation of these recommendations will remain the responsibility of the land and wildlife management agencies. The Idaho Department of Fish and Game, Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the Forest Service, in coordination with us, will continue to exercise day-to-day management responsibility within the Experimental Population Area.

The Committee will have the authority and responsibility for various tasks relating to the experimental grizzly bear population, to include: (1) Soliciting technical advice from outside experts; (2) implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan; (3) establishing a public participation process to review Committee recommendations; (4) developing strategies to emphasize recovery in the Experimental Area; (5) developing grizzly bear-related guidance for proper camping and sanitation within the Experimental Population Area; and (6) developing a response protocol for responding to grizzly bear encounters. See question 9 of the special rule for a complete list of Committee tasks.

Two scientific advisors will be appointed to provide the Committee with ready access to independent scientific information on grizzly bears. These advisors, which will not be employed by Federal agencies involved in grizzly bear recovery, will be nonvoting members, and are to attend all Committee meetings.

The special rule provides a procedure to monitor the progress of the Committee and resolve disputes if Committee actions are not contributing to the recovery of grizzly bears in the Bitterroot ecosystem or not in compliance with this special rule. Included in this provision of the special rule is a process to establish a peer review panel of three scientists (Scientific Review Panel). The Scientific Review Panel will review issues, solicit additional information if necessary, and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether actions and decisions are in compliance with the special rule and leading to recovery of the grizzly bear in the Bitterroot ecosystem. The Scientific Review Panel process is diagrammed in Figure 1. Question 11 of the special rule contains the procedures to be followed when Committee actions are not leading to the recovery of the grizzly bear in the Experimental Population Area, including the steps that will be undertaken if the Secretary assumes lead management responsibility for the experimental population.

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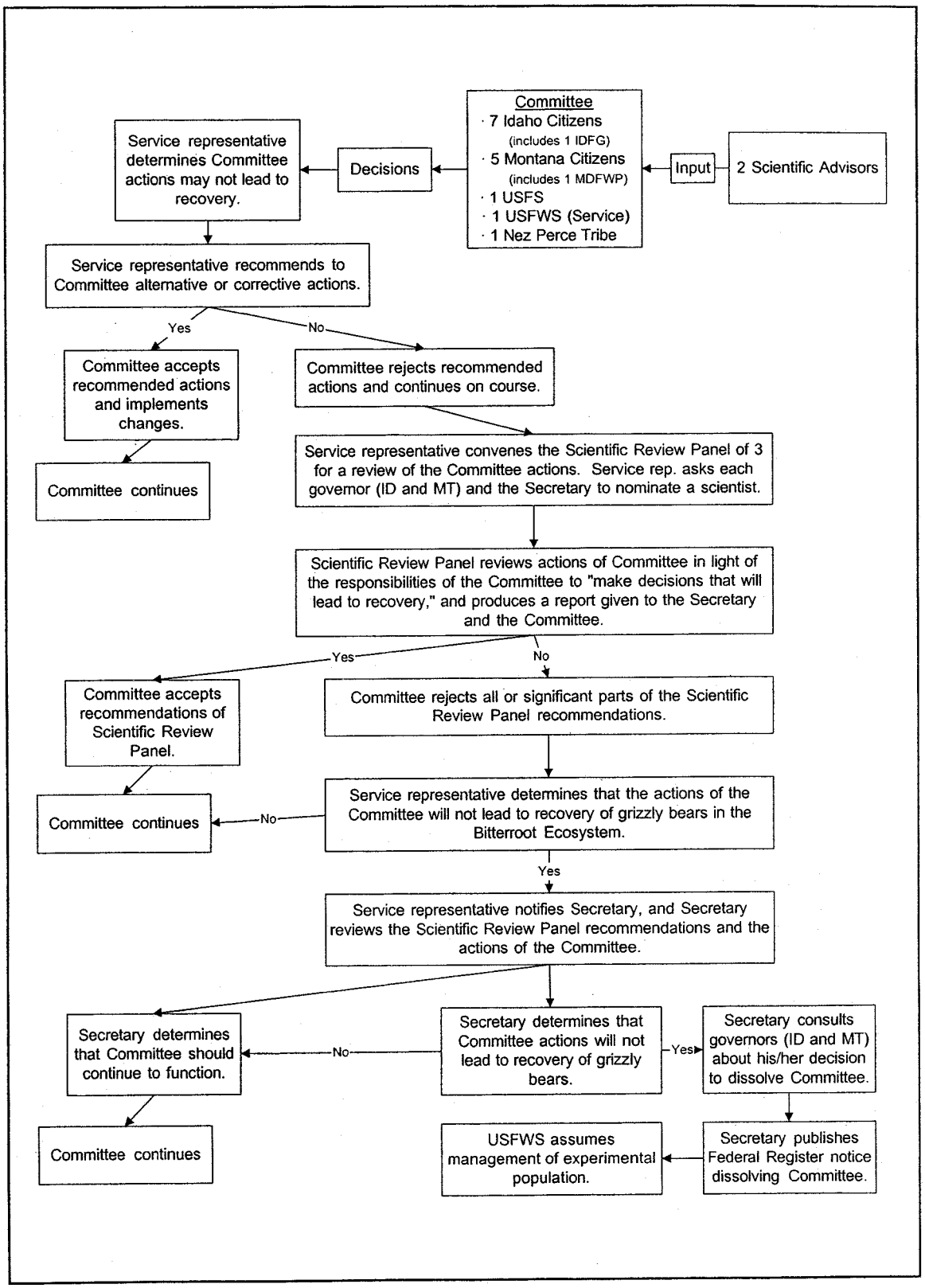


Figure 1. Scientific Review Panel process.

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**Potential for Conflict With Federal and Other Activities**

Public opinion surveys, public comments on grizzly bear management planning, and the positions taken by elected officials indicate that grizzly bears should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by grizzly bear recovery activities. The Committee will emphasize the recovery of grizzly bears in the Recovery Area, but bears moving outside the Recovery Area into other parts of the Experimental Population Area will be accommodated through management provisions in the special rule and through the management plans and policies developed by the Committee.

''Emphasize the recovery'' means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of bears will occur within the Recovery Area, and is specifically planned within the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. ''Accommodate'' means grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety or livestock. The Committee will not recommend that bears be disturbed or moved unless conflicts, including conflicts associated with livestock, are both significant and cannot be corrected as determined by the Committee. In this case, the Committee will develop strategies to discourage grizzly bear occupancy in appropriate portions of the Experimental Population Area.

Unless the Committee determines otherwise, grizzly bears will be discouraged from occupying private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area). Bears entering this area will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or that shows signs that it may become habituated to humans, will be relocated by management agencies or destroyed, if necessary. This provision is to prevent conflicts and possible bear-human injury or the death of bears, and to promote and enhance public safety.

No formal consultation under section 7 of the Act will be required regarding potential impacts of land uses, including resource extraction, on nonessential experimental grizzly bears. However, because the nonessential experimental grizzly bears are treated as a proposed species for listing, Federal agencies will be required to confer, in accordance with section 7(a)(4) of the Act, on actions that are likely to jeopardize the continued existence of the experimental bears. The Committee is responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The final decision on implementation of recommendations from the Committee will be made by those agencies. If the Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the NEPA requirements may apply. Such management plans and policies will be in accordance with applicable State and Federal laws.

People can continue to kill grizzly bears in self-defense or in defense of others, with the requirement that such taking be reported within 24 hours to appropriate authorities (OMB #1018–0095). After obtaining a permit from us, a person will be allowed to harass a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees in the Experimental Population Area provided that all such harassment is by methods that are not lethal or physically injurious to the grizzly bear and such harassment is reported within 24 hours to the appropriate authorities. We will also permit the use of livestock guard dogs to harass grizzly bears in a nonlethal fashion around livestock. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if the response protocol established by the Committee has been satisfied and it has not been possible to capture the bear or deter depredations through agency efforts. If significant conflicts between grizzly bears and livestock occur within the Experimental Population Area but outside of the Recovery Area, these could be resolved in favor of livestock by capture or elimination of the bear depending on the circumstances. We do not intend to establish a Federal compensation program for grizzly bear depredation, but compensation from existing private funding sources will be encouraged. Animal control toxicants lethal to bears are currently not used on public lands within the Recovery and Experimental Population Areas. We anticipate that ongoing animal damage control activities will not be affected by grizzly bear recovery. The Committee will review any conflicts or mortalities associated with these activities and will recommend necessary changes.

**Summary of Public Participation**

The proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). The proposed rule also was included as Appendix 13 of the Draft Environmental Impact Statement (Draft EIS) (U.S. Fish and Wildlife Service 1997) and was published on the Internet at http://www.r6.fws.gov/endspp/grizzly. We received public comments on the proposed rule and the Draft EIS through December 1, 1997, which included two extensions of the deadline in response to public requests for more time to comment. During October 1997, we held public hearings/open houses to gather public comments on the Draft EIS and proposed rule in seven communities on the perimeter of the Bitterroot area. Approximately 1,400 people attended these hearings, and 293 individuals testified. The dates and locations for the public hearings were: Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community leaders, State leaders, and interest groups in communities around the perimeter of the proposed Recovery Area.

More than 24,000 individuals, organizations, and government agencies provided comments on the two draft documents. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. The comments received included 10 petitions with more than 21,000 signatures and 15 form letters. An interagency team of 14 employees from the Fish and Wildlife Service and the Forest Service conducted an analysis of the public comments on the Draft EIS and

proposed rule in December 1997 and January 1998. We made a concerted effort to ensure that the methods used to analyze public comments were objective, reliable, and traceable. We prepared a detailed summary report, ''Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem'' and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

We reviewed and considered all written and oral comments relating to the proposed rule. Comments that specifically addressed the proposed rule were made in 33 individual letters. Numerous other comments on the draft EIS were specific to the proposed rule or related management considerations. We also considered these comments in our review of the proposed rule. We include a detailed summary of the significant issues raised in public comments on the Draft EIS and the proposed rule and our response to those issues in Chapter 5 of the Final EIS. The following summary of key changes made to the final rule as a result of issues raised in public comments on the proposed rule is abbreviated from the Final EIS Chapter 5 discussion of public comments. Refer to the Final EIS and ''Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem'' for a more comprehensive discussion of public comments on the proposed rule and Draft EIS. Both documents are available to the public (see **ADDRESSES** section).

## Key Changes in Final Rule as a Result of Public Comment

We made the following key changes and clarifications to the final rule or to discussions in the final rule based on public comments received on the proposed rule. These changes, individually and cumulatively, do not alter the predicted effect of the final rule.

1. In response to the issues of how and where the experimental population of grizzly bears will be managed, we clarified and defined several terms in the final rule including ''recovery emphasis,'' ''accommodate,'' and ''Recovery Area.'' We added a statement in paragraph (l)(2) of the final rule regarding the potential for consideration of future designated Wilderness areas for inclusion in the Recovery Area. In paragraph (l)(1) of the final rule, we modified the boundaries in the northeast end of the Experimental Population Area to use the Clark Fork River as a boundary instead of I–90, which was used in the proposed rule, because the Clark Fork River is a more logical biological boundary for the north end of the Experimental Population Area than the highway.

2. In response to the issue of effects of grizzly bears on livestock, we clarified the types of harassment permitted, including the use of livestock guard dogs around livestock.

3. The following clarifications and additions respond to the issue of human safety: If a grizzly bear enters the exclusion area in the Bitterroot Valley, State and Federal wildlife management agencies will attempt to capture it immediately, notify the public of its presence, and keep the public updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area and that presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans will be relocated or destroyed by management agencies.

4. We changed the minimum time for determining the success or failure of the experimental reintroduction that the Committee must incorporate into the standards that they establish for such a determination. The proposed rule stated that the success or failure of the program cannot be measured in fewer than 10 years. After consideration of many comments, we changed the final rule to reflect our belief that absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years.

5. We added a clarification regarding how we would calculate a refined recovery goal for the Bitterroot experimental population. The proposed rule indicated that, if the Committee refines the recovery goal for the Bitterroot grizzly bear population after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area, the recovery goal will be consistent with the habitat available within the Recovery Area. The Committee will consider additional adjacent areas of public land for contribution of suitable grizzly bear habitat for recovery when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available.

6. We added several clarifications and changes to the Committee structure and function. We made these changes in response to the following public comment issues: (a) How the Committee will be selected; (b) the need for scientific expertise on the Committee; (c) the need for clarification regarding mission, operations, and authority of the Committee; (d) the need for further insulation of the Committee from political influence; and (e) the need for a process to resolve conflicts between the Secretary and the Committee. The corresponding clarifications and changes are listed below:

(a) The Governors of Idaho and Montana will include written documentation of the qualifications of each person they nominate to the Secretary, and these nominations must be made within 60 days following the request from the Secretary.

(b) The Secretary will appoint two scientific advisors to the Committee as nonvoting members, to attend all meetings and provide scientific expertise to the Committee.

(c) We added Mission and Operating Guidelines Statements for the Committee.

(d) The Committee will implement the Bitterroot Chapter of the Recovery Plan in accordance with the final rule. The Committee may also make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. NEPA requirements may apply.

(e) The Secretary can assume lead management implementation responsibility from the Committee if the Secretary determines the Committee's decisions are not leading to recovery. The rule lays out a specific process for accomplishing this assumption of responsibility, which involves a Scientific Review Panel.

7. We changed the rule to indicate that bears outside the boundaries of the Experimental Population Area will have the status of ''threatened,'' rather than ''experimental.'' This is consistent with other experimental population rules.

In addition to the key changes just discussed, we have also changed the language and organization of the final rule to comply with the principles of ''plain language.'' These changes do not affect the content of the rule.

## Status of Reintroduced Grizzly Bears and Conclusion

If the status of the grizzly bear in the Bitterroot ecosystem is changed to threatened or endangered under the Act as a result of legal action or lawsuits, we will remove from the wild all reintroduced grizzly bears designated as nonessential experimental and revoke the pertinent regulations on the experimental population.

We do not foresee any likely situation that would require us to change the nonessential experimental status until the grizzly bear is recovered and delisted in the Bitterroot ecosystem according to provisions outlined in the Recovery Plan.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that reintroducing grizzly bears into the Bitterroot ecosystem will further the conservation and recovery of the species.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this rule is a significant regulatory action (see item ''d'') and has been reviewed by the Office of Management and Budget. Although the significance of this action under Executive Order 12866 is not related to economic effects, we have prepared an economic assessment for this special rule. The cost-benefit portion of this assessment is presented below. A complete copy of the assessment is available upon request see **ADDRESSES** section.

Cost-Benefit Assessment of the 10(j) Rule

The Service proposes to undertake the reintroduction of an experimental population of grizzly bears into the Bitterroot ecosystem for three principal reasons: (1) It is the policy of the Federal government to recover federally protected listed species so that they may be removed from the protection of the Act; (2) there is no naturally occurring market for the conservation and reintroduction of federally protected species; and (3) the reintroduction is being proposed on land owned and operated by the Federal government.

As explained previously, the Act requires the Federal government to conserve listed species and the ecosystems upon which they depend. Congress enacted the Act, as they do many other Acts, because of the need for the Federal government to correct for a market failure that results in resources being allocated inefficiently. Typically, public markets are able to allocate resources in the most efficient manner as long as there are no entry or exit constraints for market participants and no individual or group of individuals are able to influence the market price. The grizzly bear, however, like other wildlife, is not a publically traded commodity. This is because wildlife, in general, exhibits public good characteristics that render the benefits enjoyed by individuals unrivaled. In other words, because the benefits exhibited by the grizzly bear can be enjoyed by many individuals without effect on the level enjoyed by others, a ''free-rider'' problem exists whereby individuals who value the grizzly bear have an incentive to let others pay for its provision. Under these circumstances, such goods are typically under-supplied and require the Federal government to step in and correct for this social inefficiency.

In addition to the public good characteristics of the grizzly bear, perhaps as compelling a case can be made in that the Federal government is proposing to reintroduce the grizzly bear on federally owned and operated land. As a land manager, the Federal government attempts to manage its lands in a manner that is most socially efficient. The grizzly bear is a large land mammal that requires a substantial amount of acreage to survive on its own. As a result, the Federal government is in a unique position to, among other things, manage its large land holdings to the benefit and reintroduction of the grizzly bear. As a large public landowner, the Federal government constantly tries to manage its lands in a manner that provides the greatest benefit to society. Through the Wilderness Act, Congress recognized a need for the Federal government to provide and manage some of its lands as wilderness due to its public good characteristics and the lack of a market to provide a socially optimal amount. By re-establishing the grizzly bear to a public wilderness, the Federal government is maximizing social welfare to those recipients who value true wilderness in the sense that the wilderness will more closely represent its original, primitive state.

Baseline

The Service conducted an economic analysis for the EIS, looking at effects on hunter harvest, livestock depredation, land use restrictions, human safety, visitor use and existence values. This economic assessment uses some of the information used in the EIS. We recognize that we could have chosen to proceed with grizzly bear reintroduction in the Bitterroot without a new regulatory or rulemaking action (the alternative that provided for reintroduction with full Act protection), in which case we would not have needed to promulgate a 10(j) rule. However, given our need for the public and their elected officials to lend their full support to efforts to recover the grizzly bear in the Bitterroot ecosystem, our doing so would be highly unlikely. Therefore, we have chosen to compare the economic effects of the 10(j) rule to reintroduce grizzly bears to the Bitterroot ecosystem to a ''no bear'' baseline (as done in the EIS), rather than a baseline that assumes full protection under the Act.

Economic Effects of the Rule

The area affected by this rule consists of a limited area of mostly designated wilderness and surrounding lands in east central Idaho and western Montana, the Bitterroot ecosystem. The Bitterroot ecosystem, as characterized by data from 10 counties in central Idaho and 4 counties in western Montana, is approximately 44,419 square miles and 76% Federal land. As of 1996, the area had a population of about 241,000; a $4.6 billion local economy; 440,570 cattle and sheep (298,000 are grazed on national forest); approximately 274,360 ungulates, with a hunter harvest of 28,023; and, received approximately $13.2 million from recreational visits to national forests annually.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. Very few paved or unpaved roads are in the reintroduction area or immediately outside of it. These unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, should encounter vehicles and humans infrequently.

Potential Costs

One of the potential costs of grizzly bear restoration to the Bitterroot ecosystem is reduced big game hunting opportunities in hunting units/districts in or near the Recovery Area. However, we do not expect grizzly bear recovery to have any significant effect on huntable populations of ungulates in the Bitterroot ecosystem. Using Mattson's (1997) estimates of average grizzly bear predation rates of 1.4 and 5.8 ungulates per year for adult female and male bears respectively, a recovered population of 280 grizzly bears would be expected to prey upon 504 ungulates per year given a 50:50 sex ratio and a 50:50 adult-subadult ratio. This amount of loss would represent approximately 0.11% of estimated ungulate populations in the Bitterroot ecosystem, and would not measurably impact ungulate populations or hunter harvest. Of course, the impact would be significantly less until the population of grizzly bears is fully recovered, which is estimated to take 50–110 years.

A second area of potential costs associated with grizzly bear restoration to the Bitterroot ecosystem is the

possibility of livestock depredation by the recovered grizzly population. Again, these costs are expected to be very low, and are expected to be minimal prior to full recovery of the population of grizzly bears in the Bitterroot ecosystem. Via a mathematical equation using depredation rates from the Yellowstone and Northern Continental Divide ecosystems in relation to total livestock in each of these ecosystems, we estimated that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would take from 4 to 8 cattle, and from 5 to 44 sheep annually. The calculation of lost value due to this depredation is straightforward. The lost value per year is equal to the estimated number of lost animals per year times the market value of those animals. Given the average value per cow of $565 and the average value per sheep of $92 (average values as of 1996 according to Montana and Idaho Departments of Agricultural Statistics as cited in U.S. Fish and Wildlife Service 2000), we estimate that between $2,720 and $8,568 per year in livestock predation losses would occur after grizzly bears are fully recovered. It is possible that a private compensation program (such as exists for the gray wolf recovery program) will be set up to lessen the impact of these costs to individual ranchers. If this were the case, the impact of livestock losses would be shifted from the individual ranchers to contributors to such a fund.

We expect that any land use restrictions due to the restoration of grizzly bears to the Bitterroot ecosystem would be minor and temporary, and would not result in lost economic value in recreational activities, timber harvest, or mineral extraction. This conclusion is based on the experience of the Interagency Grizzly Bear Committee, a group composed of officials of the Service, the Forest Service, the Bureau of Land Management and state wildlife offices, and responsible for coordinating management of grizzlies in nearby locations.

It is expected that any land use restrictions on recreation due to the restoration of grizzly bears to the Bitterroot would not result in lost economic value. While some visitors may be inconvenienced due to occasional temporary trail closures, this inconvenience is unlikely to result in any appreciable loss of economic value as, based on experience in other areas where grizzly bears exist, such closures will be rare and use will shift to trails elsewhere. Regulations specific to outfitters operating within the Recovery Area and backcountry recreationists, including horsepackers and river rafters, may be promulgated at some future time requiring the use of bear-proof garbage and food containers and methods when in the backcountry.

While these regulations would necessarily involve some economic impact to the outfitter and the public, we do not anticipate that this impact would be substantial in any respect. The cost of bear-proofing an outfitter's camp can vary depending on the method of protection used. For a small outfitter, slings and pulleys may run as much as $50 to $100 dollars. For larger outfitters, electric fencing or containers could run $1,000 dollars. For very large outfitters with multiple camps the total cost could be $2,000 to $3,000. It is very unlikely that outfitters would reduce operations in the recovery area due to increased costs of bear-proof containers. Big game outfitting on USFS lands is allocated through special use permits. These permits are, in many areas, highly valued assets of the outfitter's business. It is unlikely that an outfitter would either abandon or underutilize their permit because of the cost of purchasing bearproof containers. The cost of the containers when amortized across the outfitter's clients over the life of the containers would represent a very small portion of the total operating expense that the outfitters face.

Timber harvest and mineral extraction are land use activities that are compatible with bear recovery as long as they meet the standards and guidelines of the Forest Service's Forest Plans. Current Forest Plans for the Clearwater and Nez Perce National Forests outside of wilderness areas are adequate for grizzly bear recovery, and we do not anticipate that this grizzly bear reintroduction will result in an economic effect on current timber harvest plans or mineral extraction. It is anticipated that future Forest Plans will continue to manage for grizzly bears as the Forest Service is required by the Act to carry out programs for the conservation of this and other listed species, the Forest Service has been an active member of the Interagency Grizzly Bear Committee, and undeveloped lands will only become more rare and valuable to the continued existence of wildlife in the future.

We examined the costs to human safety and found these to be relatively small. In the Bitterroot ecosystem, during the first several decades following reintroduction, chance of injury caused by grizzly bears would be exceedingly small due to the low density of bears in the area. Projections for human injury once bears are recovered 50–110+ years in the future, are less than one injury per year and approximately one grizzly bear-induced human mortality every few decades. Backcountry precautions, primarily keeping human foods away from bears, dramatically reduces human-grizzly bear incidents. The potential of encounters between people and grizzly bears is low, and injury rates for the Bitterroot are expected to be similar to the rates for areas outside of the national parks where grizzly bears exist.

For comparison, we used human injury rates from areas with similar circumstances: The Northern Continental Divide ecosystem and the Yellowstone ecosystem outside of Glacier and Yellowstone National Parks, respectively. Human-bear interactions in a national park are much more numerous than would be expected in the remote Bitterroot wilderness, and the statistics are not comparable. In northwest Montana (outside of Glacier Park) and northern Idaho, only two bear-inflicted injuries (one mortality) have occurred in the last 50 years. In the Bob Marshall Wilderness in 1956 a hunter shot and injured a grizzly bear that responded by mortally injuring him. In the Mission Valley in 1985, a bird hunter shot and wounded a grizzly that responded by injuring him. In the Yellowstone ecosystem outside of Yellowstone National Park, there have been 22 injuries due to grizzly bears (including 3 mortalities) within the last 159 years, for an average of one mortality every 53 years.

Given that mortalities in both of these areas average one every 50 years, and the generally accepted range of values for a human life is $4–10 million, cost in human mortalities is expected to average approximately 80,000–200,000 per year. Costs have only been monetized for human mortality. Human injury is also an additional potential cost, but was not determined for this assessment.

A potential cost is a decrease in visitation of the area by the public. However, changes in visitor use are difficult to anticipate. While some individuals might wish to see a grizzly bear in the wild, others might wish to avoid the possibility of encountering one. The costs of decreased visitation was not estimated.

Finally, the cost for the actual reintroduction is expected to be approximately $433,600 per year for the 5-year reintroduction period (U.S. Fish and Wildlife Service 2000). This includes the cost of capturing and transplanting bears ($90,600), monitoring and management of the population ($173,000), travel expenses of the Citizen Management Committee

($20,000), and initial costs for sanitation, outreach, and law enforcement activities by the Forest Service ($150,000). Annual costs for monitoring and citizen management is expected to be approximately $193,000 for each year beyond the 5-year reintroduction period.

SUMMARY OF POTENTIAL COSTS ASSOCIATED WITH THE 10(J) RULE

| | Potential annual cost ($) |
|---|---|
| Big game hunting | Insignificant. |
| Livestock depredation | 2,720–8,568.[1] |
| Bear-proofing | Not quantified as annual cost. |
| Timber harvest | Insignificant. |
| Mineral extraction | Insignificant. |
| Human mortality | 80,000–200,000.[1] |
| Human injury | Not determined.[2] |
| Reduction in visitation | Not determined. |
| Costs of monitoring/management. | 193,000.[3] |
| Total | 275,720–401,568. |

[1] Costs expected to be significantly lower initially (approaching zero), reaching these amounts after 50–110 years.

[2] Costs expected to be significantly lower initially with projections of one injury/year after 50–110 years.

[3] Costs expected to be $433,632 for the initial 5 years.

**Potential Benefits**

Grizzly bears are a high-profile species with interest nationwide. A survey of Yellowstone National Park visitors found that respondents ranked the grizzly bear highest among wildlife species they would most like to see on their trip to the park. Restoration of grizzly bears in the Bitterroot ecosystem would further increase national awareness of the presence of this species in the lower 48 States.

Existence value is the value a person associates with the knowledge that a resource exists, even if that person has no plans or expectations of ever directly using that resource. People may hold this value for a number of reasons. In this case, the resource being valued is a recovered or recovering population of grizzly bears in the Bitterroot ecosystem. Since existence values potentially affect everyone in the country, some of these impacts fall to individuals outside of the Bitterroot ecosystem. Because the presence of grizzly bears completes both the biological component of the ecosystem and the wilderness experience, existence benefits are expected to result from the reintroduction.

Another potential benefit is an increase in visitation of the area by the public. However, as stated in the ''Potential Costs'' section, changes in visitor use are difficult to anticipate. No monetary value is given to benefits from visitor use in this assessment.

Cost-Benefit Summary

We anticipate no significant costs to land use activities on public or private land with regard to hunting, timber harvest, mining, or public access/recreational use. Annual costs associated with livestock depredation, equipment for outfitters to bear-proof camps, risk to human safety, and management and monitoring of the population of grizzly bears are estimated to be approximately $275,720–401,568 or more (depending on costs for bear-proofing by outfitters). It is uncertain what the net visitation impacts will be. They were not quantified in this assessment. Existence value benefits are expected to result from this rule.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule would allow management of grizzly bears by government agencies and the public to minimize conflicts over uses of public lands, effects on domestic animals and livestock, and impacts on ungulate populations. A Citizen Management Committee would be authorized to manage implementation of the experimental population and would be tasked with implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan. Reintroduction could result in grizzly bear recovery in the Bitterroot ecosystem (achievement of the tentative recovery goal of approximately 280 grizzly bears occupying suitable habitat) in a minimum of 50 years (4% growth rate), although recovery would likely require more than 110 years (2% growth rate after the bears were released.

(b) This rule will not create inconsistencies with other agencies' actions. Nonessential experimental population designations under section 10(j) of the Act reduces both the interagency consultation requirements (with other Federal agencies) and ''taking'' restrictions of the Act. The reintroduction of grizzly bears will occur on Federal public lands managed by the U.S. Forest Service. The action allowed by this rulemaking is consistent with the policies and guidelines of the Forest Service. Because of the substantial regulatory relief provided by nonessential experimental population designations, we do not believe the reintroduction of these bears will conflict with existing or proposed human activities or hinder public use of the Bitterroot ecosystem.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because we expect minimal impacts or restrictions to existing human uses of the Bitterroot ecosystem.

(d) This rule will raise a novel policy issue. We have previously promulgated more than a dozen section 10(j) rules for experimental populations of other listed threatened and endangered species in various localities since 1984. However, this is the first experimental population rule that establishes a management process that includes a Citizen Management Committee. For this reason, the rule is a significant regulatory action in accordance with Executive Order 12866.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

We certify that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We have determined that the small entities most likely to be affected by this rule are producers of domestic livestock. There are 4,327 farms within the 14 counties covering the Bitterroot grizzly bear primary analysis area in central Idaho and western Montana. As discussed above, grizzly depredation on domestic livestock would likely be minimal during the estimated 50–110+ years until the population of grizzly bears in the Bitterroot ecosystem is fully recovered. We estimate that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would be from 4 to 8 cattle and from 5 to 44 sheep per year. Prior to full recovery, depredation losses are expected to be below these estimated levels. In a worst-case situation, depredation could impact 52 out of 4,327 farms, which would not constitute a substantial number of small entities (U.S. Fish and Wildlife Service 2000).

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we determined that designation of a nonessential experimental population of grizzly bears in the Bitterroot ecosystem will not cause: (a) Any effect on the economy of $100 million or more; (b) any major 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. Based upon the analysis of identified factors, we have determined that no individual industries within the United States will be significantly affected, and no changes in the demography of populations are anticipated. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of the grizzly bear through reintroduction to suitable habitat.

*Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)*

We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, that this final rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The management responsibility for the reintroduced population will rest with a Citizen Management Committee created by the Secretary. This Committee will involve local people in the management of this population. Travel and per diem for non-Federal members of this Committee and funding for the function of this Committee will come from the Service.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not ''take'' private property and will not alter the value of private property. More than 75% of the area included in the nonessential experimental population area is on Federal lands.

*Federalism*

In accordance with Executive Order 13132, this rule will not affect the structure or role of States and will not have direct, substantial, or significant effects on States. Also, our economic analysis indicates that considerable economic benefits would result from the designation.

In keeping with Department of the Interior policy, the Service requested information from and coordinated development of the proposal with appropriate State resource agencies in Idaho and Montana. In addition, both States participated in the development of the EIS. The Service will continue to coordinate any future designation of experimental population status with the appropriate State agencies.

*Civil Justice Reform*

In accordance with Executive Order 12988, we have further determined that this regulation does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This final rule contains collections of information requiring the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Authorization for this information collection has been approved by OMB and has been assigned control number 1018–0095. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

A Final EIS on the reintroduction of the grizzly bear in the Bitterroot ecosystem has been prepared and is available to the public (see **ADDRESSES**). The Final EIS should be referred to for analysis of the Preferred Alternative chosen in the Record of Decision.

*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 have closely coordinated this rule with the Nez Perce Indian Tribe, which has been involved in development of the rule, and determined that there are no effects.

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## Author

The principal author of this final rule is Dr. Christopher Servheen (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

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

## Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by revising the table entry for ''Bear, grizzly (=brown)'' under ''MAMMALS'' 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 | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Bear, grizzly (=brown). | *Ursus arctos* ..... | Holarctic ..... | U.S.A., conterminous (lower 48) States, except where listed as an experimental population. | T | 1,2D,9 | NA | 17.40(b) |
| Do ..... | .....do ..... | .....do ..... | U.S.A. (portions of ID and MT, see 17.84(l)). | XN | 706 | NA | 17.84(l) |
| * | * | * | * | * | * | | * |

3. Amend section 17.84 by adding paragraph (l) to read as follows:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(l) Grizzly bear (*Ursus arctos*).

(1) *Where does this special rule apply?* The special rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined as follows:

The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

(2) *What is the legal status of the grizzly bear?*

(i) The grizzly bear is listed as ''threatened'' in § 17.11 (h) and protected under this part. However, the grizzly bear population to which this paragraph (l) applies is considered a nonessential experimental population in accordance with section 10(j) of the Act.

(ii) We have determined that, as of December 18, 2000, no grizzly bear population exists in the Experimental Population Area. We find, in accordance with § 17.81 (b), that the reintroduction of grizzly bears as a nonessential experimental population, as defined in § 17.81 (b), will further the conservation of the species and will be consistent with provisions of section 10(j) of the Act, which requires that an experimental population be geographically separate from other nonexperimental populations of the same species. We also find, in accordance with § 17.81 (c)(2), that the experimental population of grizzly bears in the Experimental Population Area is not essential to the survival of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area and the Recovery Area will be accommodated through management provisions provided for in this paragraph (l) and through management plans and policies developed by the Citizen Management Committee (Committee; see paragraph (l)(6) of this section). After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a member of the nonessential experimental population.

(iv) In the conterminous United States, a grizzly bear that is outside the Experimental Population Area identified in paragraph (l)(1) of this section will be considered as threatened.

(3) *Where will grizzly bears be released, and where will recovery be emphasized?*

The Bitterroot Grizzly Bear Recovery Area identifies the area of recovery emphasis within the Experimental Population Area. The Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (See map at the end of paragraph (l) of this section). All reintroductions will take place in the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this paragraph (l) to change the definition of the Recovery Area.

(4) *What activities are prohibited in the Experimental Population Area?*

(i) You may not take (see definition in § 10.12 of this subchapter) any grizzly bear in the Experimental Population Area, except as provided in this paragraph (l). We may refer unauthorized take of grizzly bears to the appropriate authorities for prosecution.

(ii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or parts thereof that are taken from the Experimental Population Area or possessed in violation of the regulations in this paragraph (l) or in violation of applicable State wildlife conservation laws or regulations or the Act.

(iii) You may not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this paragraph (l).

(5) *What activities are allowed in the Experimental Population Area?*

(i) For purposes of this paragraph (l), except for persons engaged in hunting or shooting activities, you will not be in

violation of the Act for ''unavoidable and unintentional take'' (see definition in paragraph (l)(16) of this section) of grizzly bears within the Experimental Population Area when such take is incidental to a legal activity and is not a result of negligent conduct lacking reasonable due care, and when due care was exercised to avoid the taking. Any taking must be reported within 24 hours to appropriate authorities as listed in paragraph (l)(5)(iii) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. Shooting a grizzly bear as a result of mistaking it for another species is considered a lack of reasonable due care. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(ii) Any person with a valid permit issued by us may take grizzly bears in the Experimental Population Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for the nonessential experimental population, and with applicable State wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the Experimental Population Area in self-defense or in defense of the lives of others. Such taking must be reported within 24 hours as to date, exact location, and circumstances to the Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406–243–4903); or the Assistant Regional Director for Law Enforcement, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6125); or the Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303–236–7540); and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208–334–3700); or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406–444–2535); and Nez Perce Tribal authorities (208–843–2253) (as appropriate).

(iv) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, or appropriate Tribal authorities to harass (see definition in § 17.3) grizzly bears found in the Experimental Population Area that are actually pursuing or killing livestock (to include permitting the use of livestock guard dogs around livestock to harass such grizzly bears). Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. All such harassment must be accomplished by an opportunistic, noninjurious method (see definition of ''opportunistic, noninjurious harassment'' in paragraph (l)(16) of this section) to the grizzly bear, and such harassment must be reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (l)(5)(iii) of this section.

(v) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks or appropriate Tribal authorities to take grizzly bears on private lands found in the Experimental Population Area in a manner other than harassment as defined in this paragraph (l), in order to protect livestock actually pursued or being killed on private property. Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. Any response protocol established by the Committee must have been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel must have proven unsuccessful. All such taking must be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (l)(5)(iii) of this section.

(vi) Any authorized employee or agent of the Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Population Area if such action is necessary to:

(A) Aid a sick, injured, or orphaned grizzly bear;

(B) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;

(C) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if otherwise eliminating such depredation or loss of personal property has not been possible, and after eliminating such threat by live-capturing and releasing the grizzly bear unharmed in the area defined in paragraph (l)(2) of this section or other areas approved by the Committee has been demonstrated not to be possible;

(D) Move a grizzly bear for genetic management purposes;

(E) Relocate grizzly bears within the Experimental Population Area to improve grizzly bear survival and recovery prospects; or (F) Relocate a grizzly bear to avoid conflict with human activities. However, grizzly bears in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety, livestock, or bees. Unless the Committee determines otherwise, this rule provides that on private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in the exclusion area, and grizzly bears found there will be captured and returned to the Recovery Area, or placed in captivity, or destroyed, depending on the history of each bear. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(6) *How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population?*

(i) The Secretary will establish a Citizen Management Committee for the Bitterroot grizzly bear experimental population and will authorize management implementation responsibility as described in paragraph (l)(9) of this section, in consultation with the Governors of Idaho and Montana. As soon as possible after the effective date of this rule, the Secretary will organize the Committee by requesting nominations of citizen members from the Governors of Idaho and Montana and the Nez Perce Tribe and nominations of agency members by represented agencies.

(ii) The Committee will be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement.

(A) Membership will consist of seven individuals appointed by the Secretary based upon the recommendations of the Governor of Idaho, five members

appointed by the Secretary based upon the recommendations of the Governor of Montana, one member representing the Nez Perce Tribe appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the Forest Service appointed by the Secretary of Agriculture, and one member representing the Fish and Wildlife Service appointed by the Secretary. Members recommended by the Governors of Idaho and Montana will be based on the recommendations of interested parties and will include at least one representative each from the appropriate State wildlife agencies. If either Governor or the Tribe fails to make recommendations within 60 days, the Secretary (or his/her designee) will accept recommendations from interested parties, and will make the appointments.

(B) The Committee will consist of a cross-section of interests reflecting a balance of viewpoints, and members are to be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision-making. In their recommendations to the Secretary, the Governors of Idaho and Montana will attach written documentation of the qualifications of those nominated relating to their knowledge of, and experience in, natural resource issues and their commitment to collaborative decision-making.

(C) Except for the representatives from Federal agencies, the Committee will be selected from communities within and adjacent to the Recovery and Experimental Population Areas.

(D) The Secretary will fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor, the Nez Perce Tribe, or agency.

(7) *Will independent scientific information be readily available to the Committee?*

The Secretary will appoint two scientific advisors to the Committee as nonvoting members to attend all meetings of the Committee and to provide scientific expertise to the Committee. These scientific advisors will not be employed by Federal agencies involved in grizzly bear recovery. The Secretary will contact the Wildlife Society Chapters in Idaho and Montana and the Universities of Idaho and Montana for nominations and will select one wildlife scientist representing each State and appoint them as advisors to the Committee.

(8) *What is the overall mission of the Committee, and how will it operate?*

(i) The mission of the Committee is to facilitate recovery of the grizzly bear in the Bitterroot ecosystem by assisting in implementing the Bitterroot ecosystem chapter of the recovery plan (Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan, U.S. Fish and Wildlife Service, Missoula, Montana, 1996). The Committee will make recommendations to land and wildlife management agencies that it believes will lead to recovery of the grizzly bear. Decisions on, and implementation of, these recommendations are the responsibility of the land and wildlife management agencies.

(ii) The Committee will meet a minimum of two times per year. These meetings will be open to the public. Additionally, the committee will provide reasonable public notice of meetings, produce and provide written minutes of meetings to interested persons, and involve the public in its decision-making process. This public participation process will allow members of the public and/or special interest groups to have input to Committee decisions and management actions.

(9) *What authority will the Committee have, and what will be its primary tasks?*

The Committee will have the authority and the responsibility to carry out the following functions:

(i) Developing a process for obtaining the best biological, social, and economic data. This process will include an explicit mechanism for soliciting peer-reviewed, scientific articles on grizzly bears and their management, and holding periodic public meetings not less than every 2 years, in which qualified scientists may submit comments to and be questioned by the Committee. The two scientific advisors will lead this process. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee, including components of its management plans, must lead toward recovery of the grizzly bear in the Bitterroot ecosystem and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species.

(ii) Soliciting technical advice and guidance from outside experts. The scientific advisors will lead the development of an ongoing process to provide the Committee with the best scientific and commercial data available. The scientific advisors will provide this information in the form of peer-reviewed scientific articles on grizzly bears and their management, Committee meetings with presentations by scientific experts, and requests to State and Federal management agencies and the private sector for scientific expertise and advice.

(iii) Implementing the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan consistent with this paragraph (l). The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The Committee will make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. If Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the requirements of the National Environmental Policy Act may apply. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee will give full consideration to Service comments and opinions and those of the Forest Service, Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(iv) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to making decisions.

(v) Developing its internal processes, where appropriate, such as governance, decision-making, quorum, terms of members, officers, meeting schedules and location, public notice of meetings, and minutes.

(vi) Requesting staff support from the Service, the Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, Forest Service, other affected Federal agencies, and the Nez Perce Tribe, when necessary to perform administrative functions, and requesting reimbursement from us for non-Federal Committee members for costs associated with travel, lodging, and incidentals.

(vii) Reviewing existing grizzly bear standards and guidelines used by the Forest Service and other agencies and landowners. The Committee will perform an annual review of grizzly bear mortalities and the number and location of bear/human conflicts. This review will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the

Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the Forest Service and other agencies and landowners.

(viii) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Population Area and making recommendations to land management agencies for adoption of such guidelines. Existing camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(ix) Developing a protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Population Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine what the Committee may do to help prevent future conflicts or mortalities. The Committee will recommend, as necessary, policy changes on trail restrictions for human safety to appropriate wildlife and land management agencies.

(x) Recommending to the Service changes to recovery criteria, including mortality limits, population determinations, and other criteria for recovery as appropriate.

(xi) Reviewing all human-caused grizzly bear mortalities to determine whether new measures for avoiding future occurrences are required and make recommendations on such measures to appropriate land and wildlife management agencies. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the State Fish and Game Departments in both Idaho and Montana to develop solutions to minimize the effects on grizzly bears of black bear hunting.

(xii) Developing strategies to emphasize recovery inside the Recovery Area and to accommodate grizzly bears inside other areas of the Experimental Population Area.

(A) Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Population Area. The Committee will not recommend that bears be disturbed or moved unless conflicts are both significant and cannot be corrected as determined by the Committee. This provision includes conflicts associated with livestock, for which the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Population Area outside of the Recovery Area.

(B) Unless the Committee determines otherwise, this rule provides that private land outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), is an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas, and grizzly bears will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(xiii) Establishing standards for determining whether the experimental reintroduction has been successful and making recommendations on the inclusion of such standards in the Grizzly Bear Recovery Plan. These standards will be based on the best scientific and commercial information available and will reflect that, absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years. General guidelines for the standards by which failure will be measured include, but are not limited to, one or more of the following conditions:

(A) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Population Area and the reasons for emigration or mortality cannot be identified and/or remedied; or

(B) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(xiv) Developing procedures for the expeditious issuance of permits described in paragraphs (l)(5)(iv) and (l)(5)(v) of this section, and making recommendations on such procedures to appropriate agencies.

(xv) Developing 2-year work plans for the recovery effort for submittal to the Secretary pursuant to paragraph (l)(11)(i) of this section.

(xvi) Establishing, based on the best available science, a refined interim recovery goal for the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available and after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area. As this information becomes available, the Committee may recommend the recovery goal to the Secretary along with procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area. Additional adjacent areas of public land can be considered for contribution of suitable habitat when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available. Any recommendations for revised recovery goals developed by the Committee will require public review and our approval as appropriate prior to revision of any recovery plan. Grizzly bears outside the Recovery Area and within the Experimental Population Area can contribute to meeting the recovery goal if their long-term occupancy in such habitats outside the Recovery Area is reasonably certain.

(10) *What agencies will be responsible for day-to-day management activities?*

The Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, the Nez Perce Tribe, and the Forest Service, in coordination with us, will exercise day-to-day management responsibility within the Experimental Population Area in accordance with this paragaraph (l). The Service and these cooperating agencies will share management responsibility as per agreements with, and in consideration of, recommendations from the Committee.

(11) *How will progress of the Committee be monitored; and what process will be followed by the Secretary to resolve disputes over whether Committee actions are leading to recovery?*

(i) The Secretary or our representative on the Committee will review the Committee's 2-year work plans (see paragraph (l)(9)(xv) of this section). If the Secretary determines, through our representative on the Committee, that the Committee's decisions, work plans, or the implementation of those plans are

not leading to the recovery of the grizzly bear within the Experimental Population Area or are not in compliance with this paragraph (l), our representative will ask the Committee to determine whether such a decision, plan, or implementation of a plan is leading to recovery and is in compliance with this paragraph (l). The Secretary, who retains final responsibility and authority for implementation of the Act, will review the Committee's determination, as provided in paragraphs (l)(11)(ii) through (iv) of this section, and then make a final determination. Should the Secretary find that a decision, work plan, or implementation of a plan by the Committee is inadequate for recovery of the grizzly bear or is not in compliance with this paragraph (l), the Secretary may assume lead management responsibility.

(ii) The Service representative will consider Committee input before making any determination that Committee actions are not leading to recovery or are not in compliance with this paragraph (l). In the event that our representative on the Committee determines that the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population or are not in compliance with this paragraph (l), he or she will recommend to the Committee, based on the best scientific and commercial data available, alternative or corrective actions and provide 6 months for the Committee to accomplish those actions. Should the Committee reject these corrective actions, our representative will convene a Scientific Review Panel of three and will submit to the panel for review those Committee actions or decisions that he or she has determined are not leading to recovery or are not in compliance with this paragrpah (l). The Service representative will consider the views of all Committee members prior to convening a Scientific Review Panel.

(iii) Members of the Scientific Review Panel will be professional scientists who have had no involvement with the Committee and are not employed by Federal agencies responsible for grizzly bear recovery efforts. The Secretary will select one member of the panel, and the Governors of Idaho and Montana in consultation with the Universities of Idaho and Montana (respectively), will select one panel member each. The Scientific Review Panel will review Committee actions or decisions, solicit additional information if necessary and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether Committee actions will lead to recovery of the grizzly bear in the Bitterroot ecosystem and are in compliance with paragraph (l). Examples of Committee actions, decisions, or lack of actions that can be submitted to the Scientific Review Panel include, but are not limited to, the following: sufficiency of public involvement in Committee activities; decisions involving sanitation and outreach activities; management of nuisance bears; adequacy of recommendations to land and wildlife management agencies; adequacy of Committee actions in addressing issues such as excessive human-caused grizzly bear mortality; and other actions important to recovery of the grizzly bear in the Bitterroot ecosystem. Committee compliance with paragraph (l) provides the basis for the recommendations of the Scientific Review Panel.

(iv) If, after timely review, the Committee rejects the recommendations of the Scientific Review Panel, and our representative determines that Committee actions are not leading to recovery of the Bitterroot population, he or she will notify the Secretary. The Secretary will review the Panel's recommendations and determine the disposition of the Committee.

(A) If the Secretary determines that the Committee should maintain lead management responsibility, the Committee will continue to operate according to the provisions of this paragraph (l) until the recovery objectives under paragraph (l)(9)(xvi) of this section or the Bitterroot Ecosystem Chapter of the Recovery Plan have been met and the Secretary has completed delisting.

(B) If the Secretary decides to assume lead management responsibility, the Secretary will consult with the Governors of Idaho and Montana regarding that decision and further attempt to resolve the disagreement. If, after such consultation, the Secretary assumes lead management responsibility, the Secretary will publish a notice in the **Federal Register** explaining the rationale for the determination and notify the Governors of Idaho and Montana. The Committee will disband, and all requirements identified in this paragraph (l) regarding the Committee will be nullified.

(12) *How will the Bitterroot grizzly bear population be monitored?*

The reintroduced population will be monitored closely by Federal and State agencies in cooperation with the Committee for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(13) *How will success or failure of the project be evaluated?*

The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Committee and by the Secretary at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will recommend changes and improvements in the recovery program. Evaluating these parameters will assist in determining success or failure of the restoration.

(14) *What process will be followed if the Secretary determines the project has failed?*

(i) If, based on the criteria established by the Committee, the Secretary, after consultation with the Committee, the Governors of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, determines that the reintroduction has failed to produce a self-sustaining population, this paragraph (l) will not be used to reintroduce additional bears. Any remaining bears will retain their experimental status.

(ii) Prior to declaring the experimental reintroduction a failure, we will investigate the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, we will consider continuing the recovery effort and maintaining the relocated population. If such reasonable measures cannot be identified and implemented, we will publish the results of our evaluation in the **Federal Register** in a proposed rulemaking to terminate the authority for additional experimental grizzly bear reintroductions in the Bitterroot ecosystem.

(15) *Will the legal status of grizzly bears in the Experimental Population Area change?*

We do not intend to change the ''nonessential experimental'' designation to ''essential experimental,'' ''threatened,'' or ''endangered'' and foresee no likely situation that would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(16) *What are the definitions of key terms used in the special rule in this paragraph (l)?*

In addition to terms defined in § 10.12 and 17.3 of this subchapter, the following terms apply to this paragraph (l):

*Accommodate* means allowing grizzly bears that move outside the Recovery Area onto public land in the

Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock.

*Citizen Management Committee* (Committee) means that Committee described in paragraph (l)(6) of this section.

*Current range* means the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones or any area where there is a grizzly bear population, as defined in this paragraph (l)(16).

*Exclusion area* (Bitterroot Valley) means those private lands in Montana lying within the Bitterroot Experimental Population Area in the Bitterroot Valley outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass and west of Highway 93.

*Experimental Population Area* (Bitterroot Grizzly Bear Experimental Population Area) means that area delineated in paragraph (l)(1) of this section within which management plans developed as part of the Committee described in paragraph (l)(9) of this section will be in effect. This area includes the Recovery Area. The Experimental Population Area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

*Geographically separate* means separated by more than 10 miles. The term refers to ''wholly separate geographically'' in section 10(j)(2) of the Act. The Experimental Population Area and the recovery zone boundary of any existing grizzly bear population must be geographically separate.

*Grizzly bear population* is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different years in an area geographically separate from other grizzly bear populations. Verifiable evidence of females with young, to be geographically separate, would have to occur greater than 10 miles from the nearest nonexperimental grizzly bear population recovery zone boundary.

*Opportunistic, noninjurious harassment* means harassment (see definition of ''harass'' in § 17.3) that occurs when the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This paragraph (l) permits only this type of harassment. You cannot track, attract, search out, or chase a grizzly bear and then harass it. Any harassment must not cause bodily injury or death to the grizzly bear. The intent of harassment permitted by this definitioin is to scare bears away from the immediate area.

*Recovery Area* (Bitterroot Grizzly Bear Recovery Area) means the area of recovery emphasis within the Experimental Population Area, and is delineated in paragraph (l)(2) of this section. This area consists of the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas. The Recovery Area is within the historic range of the species.

*Recovery emphasis* means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of grizzly bears is planned to occur within the Selway-Bitterroot Wilderness portion of the Recovery Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

*Unavoidable and unintentional take* means accidental, unintentional take (see definition of take in § 10.12 of this subchapter) that occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. An example would be striking a grizzly bear with an automobile. Taking a grizzly bear by shooting will not be considered unavoidable and unintentional take. Shooters have the responsibility to be sure of their targets.

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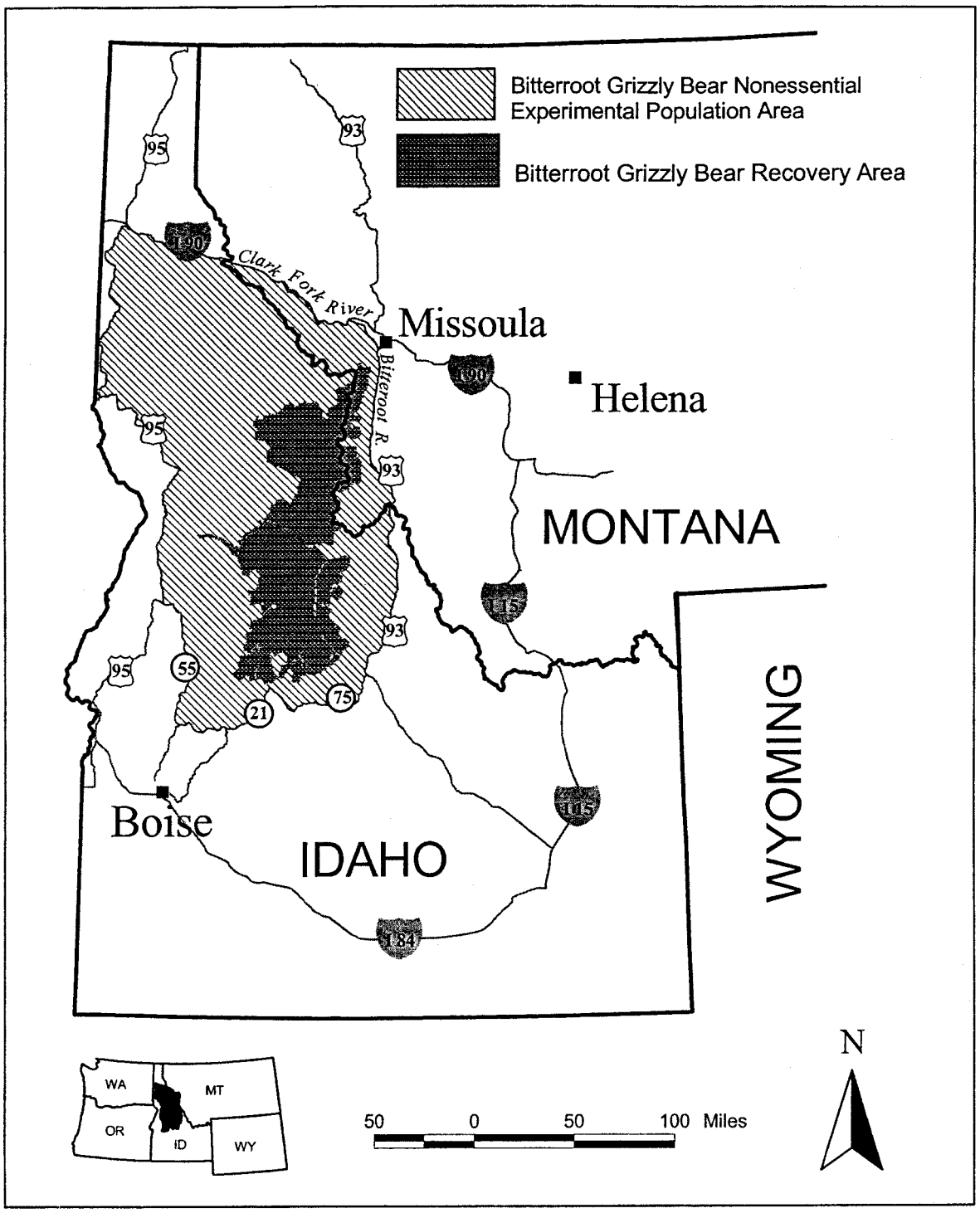


Dated: November 14, 2000.

**Kenneth L. Smith,**

*Acting Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 00–29530 Filed 11–16–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Record of Decision Concerning Grizzly Bear Recovery in the Bitterroot Ecosystem

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) issues this Record of Decision (ROD) and Statement of Findings upon consideration of the Final Environmental Impact Statement (FEIS) for the Recovery of the Grizzly Bear in the Bitterroot Ecosystem.

The Service has considered alternatives and evaluated their impacts for the recovery of the grizzly bear (*Ursus arctos horribilis*) in the Bitterroot Ecosystem of east central Idaho and western Montana as presented in the FEIS. We have solicited public and agency comments and considered these comments in the NEPA process and in making our decision. Based on that evaluation and review, the Service has decided to implement the Proposed Action Alternative as described in the FEIS. This determination was based on a thorough analysis of environmental, social, economic, and other considerations.

**ADDRESSES:** Additional copies of this ROD may be requested from Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, Bitterroot Grizzly Bear FEIS, P.O. Box 5127, Missoula, Montana 59806, or e-mail ''fw6_bitterroot@fws.gov.'' The document also is available for viewing and downloading at ''http://www.r6.fws.gov/endspp/grizzly/.''

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, at the above address, or telephone (406) 243–4903.

**SUPPLEMENTARY INFORMATION:**

### Background

The intent of this action is to recover the threatened grizzly bear in the Bitterroot Ecosystem. Grizzly bears are a part of America's rich wildlife heritage and once ranged throughout most of the western United States. However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 1,000 to 1,100 grizzly bears remain in a few populations in Montana (Northern Continental Divide, Yellowstone, and Cabinet-Yaak Ecosystems), Idaho (Yellowstone, Cabinet-Yaak, and Selkirk Ecosystems), Wyoming (Yellowstone Ecosystem), and Washington (Selkirk and North Cascades Ecosystems). Wildlife species, like grizzly bear, are most vulnerable when confined to small portions of their historical range and limited to a few, small populations. Expansion of the range of the species will increase the number of bears within the lower 48 United States, increase habitat size and extent, and further conservation of the species.

The Bitterroot Ecosystem is one of the largest contiguous blocks of Federal land remaining in the lower 48 United States. The core of the ecosystem contains two wilderness areas which comprise the largest block of wilderness habitat in the Rocky Mountains south of Canada. Of all remaining unoccupied grizzly bear habitat in the lower 48 States, this area in the Bitterroot Mountains has the best potential for grizzly bear recovery, primarily due to the large wilderness area. As such, the Bitterroot Ecosystem offers excellent potential to support a healthy population of grizzly bears and to boost long-term survival and recovery prospects for this species in the contiguous United States.

### The Selected Alternative

The Selected Alternative is the Proposed Action as described in the FEIS. The purpose of this alternative is to restore grizzly bears to central Idaho, designate this population as ''nonessential experimental,'' and implement provisions within sections 4 and 10(j) of the Endangered Species Act (ESA) to conduct special management to address local concerns. A Citizen Management Committee (CMC) will be tasked with management implementation responsibilities for the Bitterroot grizzly bear experimental population. The ''experimental population'' designation gives the Service the flexibility to promulgate a special rule that applies only to the reintroduced population. Protections established by the special rule can thus be tailored to specific areas and specific local conditions. Because these reintroduced grizzly bears will be classified as an experimental population, the Service can institute management practices that address local concerns about excessive government regulation on private lands, uncontrolled livestock depredation, excessive big game predation, and lack of State government and local citizen involvement in the program. The Service considers this a ''nonessential'' experimental population because several additional populations exist within the 48 conterminous United States and, as such, its loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild.

The Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which includes most of central Idaho and part of western Montana, will be established by the Service under authority of section 10(j) of the ESA. The Experimental Population Area encompasses approximately 25,140 square miles. This will include the area bounded by U.S. Highway 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis, to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana. The best scientific evidence available indicates there are no grizzly bears in the Experimental Population Area at this time. Ongoing grizzly bear monitoring efforts will continue.

The Service will designate a Bitterroot Grizzly Bear Recovery Area (Recovery Area) to consist of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness. The Recovery Area, a portion of the Experimental Population Area, encompasses approximately 5,785 square miles. The Recovery Area is the area of recovery emphasis. This means grizzly bear management decisions in the Recovery Area will favor bear recovery, allowing this area to serve as core habitat for survival, reproduction, and dispersal of the recovering population.

During the first few months of implementation a CMC will be formed. The CMC will be tasked with management implementation responsibilities by the Secretary of the Department of the Interior, in consultation with the governors of Idaho and Montana, for the Bitterroot grizzly bear nonessential experimental population. The CMC will be comprised of local citizens and agency representatives from Federal and State agencies and the Nez Perce Tribe. Two scientific advisors will be appointed by

the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise to the CMC. The CMC will be responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. Recommendations made by the CMC to land and wildlife management agencies will be subject to review and final decisions on implementation will be made by the responsible agency. All decisions of the CMC including components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species. Grizzly bear management will allow for resource extraction activities to continue.

Subject to availability of funding, grizzly bears will be reintroduced into the Selway-Bitterroot Wilderness portion of the Recovery Area during the second year of implementation. Specific reintroduction sites will be identified by the land and wildlife management agencies and the CMC. The Service, in coordination with the Forest Service, States of Idaho and Montana, Nez Perce Tribe, and the CMC will release a minimum of 25 grizzly bears into the Recovery Area over a period of 5 years. In order to increase the probability of survival of the initial bears, we will consider accelerating the release of the bears in the first few years, as appropriate, and in coordination with the CMC. The origin of bears for placement will include areas more than 10 miles beyond existing recovery zone lines in the Yellowstone and Northern Continental Divide Ecosystems, and British Columbia and Alaska (nonsalmon-eating bears), as appropriate. Bears will be removed from source populations only if there is no significant impact to population health or recovery. This release will be no sooner than 1 year after initiation of formation of the CMC and initiation of sanitation and information efforts.

Bears moving outside the Recovery Area will be accommodated through management provisions in a final Special Rule and through recommendations on land and wildlife management plans and policies developed by the CMC, unless potential conflicts are significant and cannot be corrected. The term ''accommodate'' means grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area will not be disturbed unless they demonstrate a real threat to human safety or livestock.

People can continue to kill grizzly bears in self-defense or in defense of others, provided that such taking is reported within 24 hours to appropriate authorities. Grizzly bears will be managed according to existing grizzly bear guidelines, except in the case of grizzly bears on private land that are killing livestock and could not be captured by management authorities. In such cases, landowners will be issued a permit by the Service and the Idaho Fish and Game Department, or the Montana Department of Fish, Wildlife, and Parks, or appropriate Tribal authorities. Following issuance of a permit by the Service and the Idaho Fish and Game Department, or the Montana Department of Fish, Wildlife, and Parks, or appropriate Tribal authorities, the permittee will be allowed to harass, through noninjurious means, a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if it has not been possible to capture such a bear or deter depredations through agency efforts. If significant conflicts occur between grizzly bears and livestock within the Experimental Population Area outside of the Recovery Area, these can be resolved in favor of the livestock by agencies capturing or eliminating the bear, depending on the circumstances. There will be no Federal compensation program for livestock losses, but compensation from existing private funding sources will be encouraged.

It is anticipated that ongoing animal damage control activities will not be affected by grizzly bear recovery. Animal control toxicants lethal to bears are not used on public lands within the Recovery Area and the Experimental Population Area. Any conflicts or mortalities associated with these activities will result in a review by the CMC, and any necessary changes will be recommended by the CMC.

The selected alternative will be implemented as an overlapping staged process. The initial stage will be formation of the CMC. The second stage will be simultaneous with CMC formation and will include efforts to decrease the availability of human-related foods to wildlife by increasing the availability of bear-proof garbage storage containers in campgrounds and facilities in and around the Recovery Area. The sanitation program will include efforts by the Forest Service, permittees, and private landowners in and around the Recovery Area. The second stage also will include an enhanced information effort to inform people who recreate in the area how to minimize their chances of encountering bears. Public education efforts will include—presentations at schools in and around the Recovery Area to teach children about grizzly bears and how to recreate safely in grizzly bear country; presentations to all civic clubs and interested organizations about grizzly bears and how to recreate safely in grizzly bear country; and placing of informative signs at all trail heads in and around the Recovery Area. The third stage will be placement of bears, which will begin after the CMC has been established and the sanitation and information programs have begun.

The selected alternative represents the environmentally preferable alternative which balances the biological needs of recovering grizzly bears and public concerns about the potential management of non-experimental grizzly bear populations under the ESA. Establishment of the nonessential experimental population as proposed under this alternative will require promulgation of a final special rule. This alternative offers the most efficient and realistic plan to result in the recovery of grizzly bears in the Bitterroot Ecosystem, given concerns of local residents over grizzly bear restoration. The nonessential experimental population designation under section 10(j) of the ESA will allow for flexible and responsive management to minimize the potential negative impacts of grizzly bears to private property, big game populations, other listed or sensitive species, and other natural resource programs on private and public lands. The CMC will be tasked with management responsibilities for this grizzly bear population to address local concerns.

In order to implement the Proposed Action Alternative in the FEIS, the Service is required to publish a regulation to establish a nonessential experimental population of grizzly bears. When such a special rule establishing the experimental population is promulgated, the Service will administer the regulation in the manner described in the FEIS and this ROD. This will require cooperation with and by other agencies within the Department of the Interior, including but not limited to the Bureau of Land Management and the Bureau of Indian Affairs, and the Department of Agriculture, including but not limited to the Forest Service and Wildlife Services. The Service also will cooperate with the States of Wyoming, Idaho, and Montana, the Nez Perce and other potentially affected Indian Tribes, and various other

individuals within the United States and Canadian governments.

Implementation of this decision is contingent upon the Service receiving adequate appropriations, so that the current level of funding for Service activities in other grizzly bear recovery areas will not be compromised.

**Other Alternatives Considered**

Other than the proposed action, the major alternatives considered and evaluated were:

*Alternative 1A. Restoration of Grizzly Bears as a Nonessential Experimental Population with Service Management Alternative.* Grizzly bears would be reintroduced to central Idaho and designated as a nonessential experimental population. The Service would manage this grizzly bear population under provisions of section 10(j) of the ESA to address local concerns. The nonessential experimental designation would allow flexibility in the Service management of the population such that negative impacts to private property, big game populations, other listed species, and other natural resource programs on private and public lands could be minimized. However, this alternative does not address one of the most substantive issues from public comment on the proposal—the issue of necessity for local control and input into resource management decisions affecting local citizens. Given the contentious nature of this proposal, and the local opposition to Federal management actions, the Service believes the probability of successfully recovering grizzly bears in the Bitterroot Ecosystem will be maximized by actively involving local citizens in management of the restored population.

*Alternative 2. The No Action Alternative—Natural Recovery.* This alternative describes the implications of current management activities, assuming these will continue over the next 50+ years. A description of this course of no action provides a reference point to compare and evaluate environmental consequences associated with other alternative plans. The overall environmental effects of taking no action would likely result in no recovery of grizzly bears in the Bitterroot Ecosystem, although it may result in grizzly bear repopulation in 100–160 years. Given existing information, it is very unlikely that grizzly bears would disperse from currently occupied areas and successfully repopulate the Bitterroot Ecosystem naturally. If grizzly bears did disperse to the Bitterroot Ecosystem they would be protected as threatened under the ESA. This would result in less management flexibility for the Service to resolve local concerns about land use restrictions on public land, predation on big game herds and potential loss of hunting opportunity, and livestock depredation.

*Alternative 3. The No Grizzly Bear Alternative.* This alternative would prevent grizzly bear recovery in the Bitterroot Ecosystem by changing current laws and allowing unrestricted take of grizzly bears by the public. This alternative would prohibit restoration of the currently missing native grizzly bear from the largest block of wilderness habitat in the Rocky Mountains south of Canada. Under this alternative, the potential contribution of an additional population of grizzly bears to the recovery effort in the conterminous United States would never be realized. Also, none of the economic and social benefits or costs associated with the presence of a restored grizzly bear population would occur. This alternative would require new legislation by Congress to change the ESA, and legislation by the States of Idaho and Montana to change State laws that protect grizzly bears in the Bitterroot Ecosystem.

*Alternative 4. Restoration of Grizzly Bears as a Threatened Population with Full Protection of the ESA and Habitat Restoration Alternative.* This alternative would achieve recovery through reintroduction of a threatened population of grizzly bears and extensive habitat protection and enhancement to promote natural recovery. Primary grizzly bear management responsibility would reside with the Service and include active participation by the States and the Nez Perce Tribe. A 10-member Scientific Committee would be established to perform additional research, implement reintroduction of bears, and monitor results of the program. Certain actions in this alternative, such as the road management plan to obliterate a large number of roads to achieve a road density of 0.25 mile/square mile and the elimination of timber harvest in all roadless areas, are not necessary actions to achieve grizzly bear recovery, and thus decrease the efficiency with which this alternative could achieve recovery in the Bitterroot Ecosystem. Also, reintroduction of a threatened population would allow less management flexibility to address local concerns about livestock depredation, restrictions to natural resource programs on public and private lands, and impacts to other wildlife species. Based on numerous public comments on this proposal, the Service believes the probability of successfully recovering grizzly bears in the Bitterroot Ecosystem will be maximized by actively involving local citizens in management of the restored population

*Alternative 4A. Restoration of Grizzly Bears as a Threatened Population with Full Protection of the ESA and Service Management Alternative.* This alternative would achieve recovery through reintroduction of a threatened population of grizzly bears with the Service managing recovery of the population. Other Federal and State agencies and the Nez Perce Tribe would assist the Service with management activities. A 10-member Scientific Advisory Committee would be appointed to make recommendations regarding research needs and strategies for reintroduction and monitoring of grizzly bears. Reintroduction of a threatened population would allow less management flexibility to address local concerns about livestock depredation, restrictions to natural resource programs on public and private lands, and impacts to other wildlife species.

**Minimization of Impacts**

Possible project impacts and public concerns, and methods to be used to mitigate those impacts and concerns were addressed as follows:

(1) Lack of local public involvement in the management of the reintroduced species was addressed by development of the CMC concept;

(2) Lack of sufficient scientific input was addressed by adding two scientific advisors to the CMC to be nominated by the Universities of Idaho and Montana, and requiring the CMC to use the best available science in decision-making;

(3) Public safety on private lands in the Bitterroot Valley, Montana, was addressed by making these private lands an exclusion zone where any grizzly bear would be immediately captured and relocated into the wilderness or destroyed if necessary;

(4) Possibility of political interference from the Secretary of the Department of the Interior on the CMC was addressed by establishing a scientific review panel that would be formed if the Service representative determined (after consultation with the CMC) that the CMC was not making decisions that would lead to recovery;

(5) Concern about removal of bears from existing threatened populations was addressed by clarifying that bears will not be removed from within the United States grizzly bear recovery zones or within 10 miles of bear recovery zones so as to not remove any

bears from these core areas for any listed population;

(6) Concern that the CMC would make land management decisions on public lands was addressed by clarifying that the CMC will not make land management decisions on public lands, but may make only recommendations about changes in public land management or public hunting seasons, and any changes regarding these issues would have to be made with public involvement by the land management or State fish and game agencies after complying with NEPA or other appropriate laws;

(7) Adequacy of the habitat in the Bitterroot Ecosystem was addressed by adding an appendix report from the Craighead Wildlife-Wildlands Institute documenting the abundance and distribution of grizzly bear food groups in the Bitterroot Ecosystem, and by a habitat-based population assessment by Dr. Mark Boyce of the University of Alberta detailing how many grizzly bears can be expected to live in the Bitterroot Ecosystem;

(8) Lack of a corridor between the Bitterroot Ecosystem and areas where grizzlies presently exist was addressed by noting that the linkage zone evaluation task in the recovery plan will be completed in 2000, and will identify where possible linkage zones exist and what can be done to maintain the opportunities for such linkage in the future; and,

(9) Impacts to listed steelhead and salmon species will be minimized through Service adherence to the conservation recommendations of the National Marine Fisheries Service Biological Opinion for this project dated May 1998.

Significant New Issues Raised from Comments Received on the FEIS

The Service appreciates all comments on the FEIS, and the high level of public interest and participation throughout the NEPA process for this proposal. The Service received a number of comments during the 30-day time period following publication of the notice of availability of the FEIS. Approximately 14,800 total comments were received from individuals, organizations, and government agencies, which included 800 letters and 14,000 form letters/postcards. The Service reviewed all public comments prior to developing this ROD. The majority of comments received were directed at registering opposition or support to the reintroduction of grizzly bears into the Bitterroot Ecosystem. Many comments were essentially votes which contained a statement of opinion, and were not substantive input to environmental issues or alternatives to correct or improve the content of the FEIS and ROD.

The majority of substantive issues raised in the FEIS comments were identical or similar to issues raised during three previous public comment periods for this proposal. These issues have been addressed by the Service throughout the NEPA process in the following documents, incorporated here by reference—''Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem'' (U.S. Fish and Wildlife Service 2000); ''Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem'' (U.S. Fish and Wildlife Service 1998); ''Draft Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem'' (U.S. Fish and Wildlife Service 1997); ''Summary of Public Comments on the Scoping of Issues and Alternatives for Grizzly Bear Recovery in the Bitterroot Ecosystem'' (U.S. Fish and Wildlife Service 1995); ''Summary of Public Comments on the Notice of Intent to Prepare an Environmental Impact Statement for the Reintroduction of Grizzly Bears to the Bitterroot Ecosystem'' (U.S. Fish and Wildlife Service 1995).

A few new issues were raised during the 30-day time period following the notice of availability of the FEIS. Response to these new issues are listed below.

*Issue 1*—Several commentors suggested that we accelerate reintroduction with more than 5 bears per year and use more than 25 total bears if more bears are available. Other comments suggested using bears from Alaska.

*Response*—The Service recognizes that accelerating reintroduction would foster recovery of the grizzly by increasing their probability of survival in the first few years, and we will consider increasing the number of bears released in the first few years, as appropriate. We will coordinate any such decision with the CMC. The Service also will consider the possibility of reintroducing interior Rocky Mountain (non-salmon eating) bears from Alaska as appropriate, and will coordinate any such decision with the CMC.

*Issue 2*—Some commentors asked why we did not consider essential experimental status in the range of alternatives in the FEIS.

*Response*—The term ''essential'' experimental population means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. The Service has always considered a reintroduced Bitterroot population to be ''nonessential'' experimental because several additional populations exist within the 48 conterminous United States and, as such, its loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild.

*Issue 3*—Some commentors continue to question the suitability of the habitat data including those data presented in Appendix 21D, the report on the abundance and distribution of grizzly bear food plant groups in the Salmon-Selway Ecosystem. Other comments questioned why the Recovery Area does not include certain areas in the Bitterroot Ecosystem that contain quality food sources.

*Response*—The Service believes that the data on bear foods presented in the FEIS are the best data available and demonstrate the sufficiency of the habitat to support a grizzly bear population. Under the Proposed Action Alternative grizzly bears are expected to occupy the areas outside the recovery emphasis area and will be accommodated so they can continue to live in these areas. Accommodate means allowing grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock. However, as recovery proceeds, the Service and the CMC will cooperate to continue to increase the available knowledge and consider new information on the distribution and abundance of bear foods in the Bitterroot Ecosystem; and will use such knowledge to make management decisions to promote recovery. The Service is committed to using the best data available.

*Issue 4*—Some commentors stated that the implementation of the Proposed Action Alternative would be in conflict with existing Forest management plans and would require the Forest Service to issue a ROD in order to implement the Proposed Action Alternative.

*Response*—The Service has consulted with the Forest Service on this concern, and the Forest Service does not see any conflicts with existing forest management plans nor does the Forest Service see the need to issue an EIS and a ROD to concur with the Proposed Action Alternative of the Service.

*Issue 5*—Some commentors suggested that the Scientific Review Panel needs specific timeframes for response and that the governors should not have the

ability to appoint two of the three members.

*Response*—The Service believes that specific timeframes would be unwarranted given the varied nature of considerations in which this panel would be involved, and notes that the process protocol for the Scientific Review Panel will be laid out clearly in the Special Rule. We also believe that it is important for the appointment of members of the Panel to be a shared responsibility in order to have shared ownership of the results of the panel review. The process of the Scientific Review Panel will be an open public process and the Service believes that appointment of inappropriate members of the panel would be contrary to the Special Rule. Also, the Secretary has the responsibility to consider the recommendations of the Scientific Review Panel but is not bound by their recommendations as to the future of the CMC.

*Issue 6*—Some commentors were concerned that there is no guarantee that any voting members of the CMC would be scientists and felt that the science advisors should be voting members.

*Response*—Representation on the CMC is expected to include scientists from State and Federal agencies and the CMC is directed to use the best available scientific information in making decisions as per their charter. The Service also believes that having the scientific advisors attending as non-voting members will actually make their input and comments less subject to pressure and influence than scientists from the respective States who are voting members. The CMC process and meetings will be open to the public. If the input of the scientific advisors is not sought by the CMC or if their input is ignored in CMC decisions, then this will be public knowledge and the CMC will have to explain their actions. If the advice of the scientific advisors is ignored to the point that the decisions of the CMC are not leading to recovery, the Secretary's representative will inform the CMC of this and of the possible empaneling of the Scientific Review Panel. This Scientific Review Panel could recommend that the input of the scientific advisors should be heeded and remind the CMC that they are bound to use the best available science. Thus, the Service believes there are sufficient checks and balances in the process to assure that the input of the scientific advisors will be used by the CMC.

*Issue 7*—One commentor stated that the CMC will only review the plans and policies of agencies, and not projects that may jeopardize the continued existence of an experimental species, and believes this does not meet the standard of the ESA.

*Response*—Meeting section 7 responsibilities is not a responsibility of the CMC. If a Federal agency determines that its action might jeopardize the continued existence of the species, the agency shall conference with the Service, as per the mandates of section 7(a)(4) and section 10(j)(2)(C) of the ESA.

*Issue 8*—Some commentors asked where the wording is in section 10 of the ESA that allows delegation of decision-making authority to the CMC.

*Response*—The authority for creation of the CMC is contained in section 4(f)(2) of the ESA where it states, ''The Secretary, in implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons.'' Under this authority, the CMC is tasked with specific responsibilities for recovery by implementing the recovery program in the Bitterroot Ecosystem. Further, section 4(f)(2) of the ESA states that appointments of such groups to develop and implement recovery plans ''. . . shall not be subject to the Federal Advisory Committee Act.'' Additionally, Federal agencies have authority under case law to task another entity to accomplish certain functions, as long as there are appropriate and adequate legal safeguards.

*Issue 9*—One commentor asked how corporate landowners will relate to the CMC and how will the CMC be involved in the review of corporate management plans for these lands.

*Response*—The Governors of each State are able to appoint corporate landowners or employees of such corporations to the CMC. The Service believes that inclusion of corporate landowners in CMC processes is important and valuable, and will encourage the CMC to involve corporate landowners in CMC outreach efforts, invite corporate landowners to CMC meetings, and to include corporate landowners in CMC processes. Private land owners would not lose any of their management authority and the CMC would only make management recommendations to them.

*Issue 10*—Some commentors indicated the Service needs to implement a proactive outreach and information and education program combined with a sanitation program to better inform the public about grizzly bear management and to increase the safety of humans and bears in the Bitterroot.

*Response*—The Service has included this as stage two in the implementation of the selected alternative.

*Issue 11*—Some commentors think the success or failure of the program should be measured over a longer timeframe than a minimum of 10 years as stated in the FEIS.

*Response*—The Service agrees that for such a long-lived species a 10-year timeframe to measure the success or failure of reintroduction is not sufficient. We have extended the timeframe to a minimum of 20 years, such that it reads, ''* * * the success or failure of the program cannot be measured in less than 20 years.''

*Issue 12*—Some commentors think there is inadequate information and research to indicate there are currently no grizzly bears in the Bitterroot Ecosystem.

*Response*—The best scientific evidence available indicates there are no grizzly bears in the Experimental Population Area at this time. Published reports by Melquist (Melquist 1985. A preliminary survey to determine the status of grizzly bears in the Clearwater National Forest of Idaho) and by Groves (Groves 1987. A compilation of grizzly bear reports from central and northern Idaho), as well as the March 28, 1998, letter from Wayne Melquist to Christopher Servheen presented in Appendix 23 of the FEIS show no documentation of grizzly bears in the Bitterroot Ecosystem. Ongoing grizzly bear monitoring efforts would continue, and the Service will continue to follow up on promising reports and to cooperate with all efforts to locate grizzly bears in the Bitterroot Ecosystem.

*Issue 13*—Some commentors were concerned that the Secretary can ignore a notice of the Scientific Review Panel that the CMC is not making decisions that will lead to recovery and decide to continue the CMC rather than disband it.

*Response*—The ultimate authority to make decisions to implement the ESA is that of the Secretary. Nothing in the Special Rule or the FEIS can subjugate the authority of the Secretary to the Scientific Review Panel. The Scientific Review Panel process and any subsequent decisions of the Secretary will be open to the public and public review.

*Issue 14*—One comment questions if there is a contradiction between the statement that grizzly bear management decisions will favor bear recovery in the Recovery Area, and the statement that if significant conflicts occur between grizzly bears and livestock in the Experimental Population Area that the

conflict could be resolved in favor of livestock.

*Response*—The ROD has been clarified to state that if significant conflicts occur between grizzly bears and livestock in the Experimental Population Area, outside the Recovery Area, the conflict could be resolved in favor of livestock.

*Issue 15*—One comment questions if the Cabinet-Yaak and Selkirks would have grizzly ''populations'' using the definition of a population in the FEIS in Appendix 25.

*Response*—Both the Cabinet-Yaak and Selkirk Ecosystems have had multiple sightings of females with cubs and with enough offspring to meet the definition of a population used in the FEIS.

**Findings and Decision**

Having reviewed and considered the FEIS for the recovery of the grizzly bear in the Bitterroot Ecosystem and the public comments thereon, the Service finds as follows:

(1) The requirements of NEPA and its implementing regulations have been satisfied; and

(2) Statutory authority for the Service to implement this project exists; and

(3) The Proposed Action Alternative represents the best balance between the Service's goals and the objectives and the public's concerns identified throughout the public participation process; and

(4) Consistent with the recovery goals, and with social, economic, and other essential considerations from among the reasonable alternatives, the Proposed Action Alternative minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the FEIS; and

(5) Consistent with the social, economic, and other essential considerations to the maximum extent practicable, adverse environmental effects identified in the FEIS will be minimized or avoided.

Having made the above findings, the Service has decided to proceed, as funding permits, with implementation of the Proposed Action Alternative. The decision to implement this alternative is subject to the following conditions that will further minimize or avoid the environmental impacts and public concerns identified during the environmental review process:

(1) The process of grizzly bear recovery in the Bitterroot Ecosystem will be implemented in a staged process with initial formation of the CMC, and ongoing sanitation enhancement and public information efforts;

(2) if the Service receives adequate funding, grizzly bears could be reintroduced in 2002, following formation of the CMC and successful initiation of the sanitation and informational efforts, which will be ongoing as the bears are placed in the area;

(3) bears for reintroduction will be taken from areas more than 10 miles beyond existing recovery zone lines in the Yellowstone and Northern Continental Divide Ecosystems, and from British Columbia and Alaska (nonsalmon-eating bears), as appropriate;

(4) to maximize human safety and bear survival, bears placed in the Bitterroot will have no history of conflict with people or livestock;

(5) all reintroduced bears will be radio-monitored upon placement; and

(6) at least 25 bears will be placed into the area in coordination with the CMC and this number may increase pending scientific considerations of the need to have a larger initial population so as to increase the probability of eventual recovery.

This statement of Findings/ROD will serve as the written facts and conclusions relied upon in reaching this decision.

Dated: November 13, 2000.

**Ralph O. Morgenweck,**

*Regional Director, Denver, Colorado.*

## Appendix—Errata Sheet for the Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem

The following list includes clarifications or corrections to the FEIS. Many of the items listed were brought forward by the public in their comments on the FEIS. The Service appreciates the input, and this opportunity to correct and improve the FEIS. None of the corrections listed below significantly affect the analyses or conclusions of effect in the FEIS.

1. Table S–2 (page xl), Table 2–1 (page 2–79), Chapter 2 (page 2–57, last paragraph)—The FEIS incorrectly states that for the Service to implement Alternative 4, the principal laws that govern land management (agencies) on Federal lands would have to be changed. This is corrected to state that for the Service to implement Alternative 4, the National Forest Land Management Plans that govern land management by agencies on Federal lands would have to be amended or revised.

2. Pages 2–27 (fourth paragraph, last sentence) and 2–41 (third paragraph)—The FEIS states, ''bears found outside the experimental population area boundaries are a fully threatened species, not experimental bears.'' This is restated, ''In the conterminous United States, a grizzly bear that is outside the experimental population area will be considered as threatened.''

3. Page 2–6, number 3(b); page 2–8, fourth paragraph; page 2–12, second paragraph—The FEIS states, ''Two scientific advisors would be appointed by the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise in support of CMC management recommendations.'' This is clarified to state, ''Two scientific advisors would be appointed by the Secretary to the CMC as non-voting members, to attend all meetings and provide scientific expertise to the CMC.''

4. Page 6–128, second paragraph, last sentence—The FEIS states, ''The CMC would be responsible for developing land-use restrictions as necessary for grizzly bear management.'' This is corrected to be consistent with other statements in the FEIS that indicate, ''The CMC would be responsible for recommending changes in land-use standards and guidelines in the Bitterroot Ecosystem as necessary for grizzly bear management. Decisions on, and implementation of these recommendations is the responsibility of the land and wildlife management agencies.''

5. Page 4–18, third paragraph, first sentence—The FEIS states, ''This alternative allows for a citizens management committee to decide if trails, roads, and other areas would be closed to improve recovery efforts for grizzly bears.'' This is corrected to state, ''This alternative allows for a citizen management committee to make recommendations to land management agencies for road, trail and area closures necessary to improve recovery efforts for grizzly bears.''

6. Page 2–14, second paragraph—The FEIS states, ''Idaho Department of Fish and Game and/or the Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the USDA Forest Service, in coordination with the Service, would exercise day-to-day management responsibility within the experimental population area while implementing the Bitterroot Ecosystem Grizzly Bear Recovery Plan Chapter, the Special Rule, and the policies and plans of the CMC.'' This is clarified to state, ''Idaho Department of Fish and Game and/or the Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the USDA Forest Service, in coordination with the Service, would exercise day-to-day management responsibility within the experimental population area while implementing the Bitterroot Ecosystem Grizzly Bear Recovery Plan Chapter, the Special Rule, and considering the recommendations of the CMC.''

7. Page 6–111, Table 6–13—The Management Area Type of ''Unroaded/essentially undeveloped'' is corrected to ''Essentially undeveloped.''

8. The Welcome Creek Wilderness in western Montana was omitted from the list of designated wilderness areas in the Primary Analysis Area. The addition of this designated wilderness area to the Primary Analysis Area increases the total Wilderness acreage by 28,000 acres.

[FR Doc. 00–29531 Filed 11–16–00; 8:45 am]

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Federal Register

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# Part V

# The President

## Proclamation 7377—America Recycles Day, 2000

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7377 of November 15, 2000**

## America Recycles Day, 2000

**By the President of the United States of America**

**A Proclamation**

As we look forward to Thanksgiving, our annual celebration of America's great bounty, it is appropriate to observe America Recycles Day and focus on how to preserve that bounty for the benefit of future generations.

Recycling waste and purchasing products made from recycled materials are among the easiest and most effective measures every American can take to conserve our resources and create a cleaner environment. Currently, our country recovers more than 28 percent of the billions of pounds of waste generated by Americans annually—an effort that translates into enough savings to supply the energy needs of 9 million U.S. households. But the recycling process succeeds only when recovered materials are returned to retailers as new products that are purchased by consumers; otherwise, the recycled products themselves must be disposed of as waste.

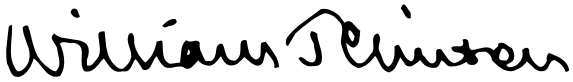
Buying recycled products conserves resources, reduces water and air pollution and greenhouse gas emissions, and saves energy. While beneficial for the environment, the recycling process is good for our economy as well. By promoting the development of markets for recycled products, we are also creating new jobs, many of which are in America's inner cities, where job creation is particularly critical. It is estimated that while incinerating 10,000 tons of waste creates 1 job, and landfilling the same amount creates 6 jobs, recycling the same 10,000 tons creates 36 jobs. Nationwide, recycling and remanufacturing provide 1 million jobs and $100 billion in revenue.

To ensure the Federal Government's leadership in the recycling effort, I signed an Executive Order in 1998 directing all Federal agencies to expand and strengthen their commitment to recycling and buying recycled-content and environmentally preferable products. The Federal Government now purchases more than $350 million in recycled-content products annually—an increase of $112 million a year, or 30 percent, from just a decade ago.

America Recycles Day helps us to build on this progress by uniting environmental and community organizations, business and industry, and agencies at all levels of government as partners in the vital effort to keep recycling working. By encouraging every business and consumer in America to start or enhance recycling efforts and to buy recycled-content products, we can sustain our economy, improve our environment, and preserve our precious natural resources for the sake of generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2000, as America Recycles Day. I urge all Americans to observe this day with appropriate ceremonies and activities and to take personal responsibility for the environment not only by recycling, but also by choosing to purchase and use products made from recycled materials.

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



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  - Western Pacific pelagic fisheries; comments due by 11-20-00; published 10-19-00

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Arsenic; maximum contaminant level; correction; comments due by 11-20-00; published 10-27-00

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Florida; comments due by 11-24-00; published 10-5-00
North Carolina; comments due by 11-24-00; published 10-5-00
South Dakota; comments due by 11-24-00; published 10-5-00
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**TENNESSEE VALLEY AUTHORITY**
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## 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. 1235/P.L. 106–467**

To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

**H.R. 2780/P.L. 106–468**

Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

**H.R. 2884/P.L. 106–469**

Energy Act of 2000 (Nov. 9, 2000; 114 Stat. 2029)

**H.R. 4312/P.L. 106–470**

Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

**H.R. 4646/P.L. 106–471**

To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

**H.R. 4788/P.L. 106–472**

Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

**H.R. 4794/P.L. 106–473**

Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

**H.R. 4846/P.L. 106–474**

National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

**H.R. 4864/P.L. 106–475**

Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

**H.R. 4868/P.L. 106–476**

Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

**H.R. 5110/P.L. 106–477**

To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the ''George E. Brown, Jr. United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2182)

**H.R. 5302/P.L. 106–478**

To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the ''William Kenzo Nakamura United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2183)

**H.R. 5331/P.L. 106–479**

To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

**H.R. 5388/P.L. 106–480**

To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the ''Herbert H. Bateman Education and Administrative Center''. (Nov. 9, 2000; 114 Stat. 2186)

**H.R. 5410/P.L. 106–481**

Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

**H.R. 5478/P.L. 106–482**

To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

**H.J. Res. 102/P.L. 106–483**

Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

**S. 484/P.L. 106–484**

Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

**S. 610/P.L. 106–485**

To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

**S. 698/P.L. 106–486**

To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

**S. 710/P.L. 106–487**

Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

**S. 748/P.L. 106–488**

To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

**S. 893/P.L. 106–489**

To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

**S. 1030/P.L. 106–490**

To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

**S. 1367/P.L. 106–491**

To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

**S. 1438/P.L. 106–492**

National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

**S. 1778/P.L. 106–493**

To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

**S. 1894/P.L. 106–494**

To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

**S. 2069/P.L. 106–495**

To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

**S. 2425/P.L. 106–496**

Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

**S. 2872/P.L. 106–497**

Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

**S. 2882/P.L. 106–498**

Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

**S. 2951/P.L. 106–499**

To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper

Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

**S. 2977/P.L. 106–500**

To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

**Last List November 14, 2000**

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