6–6–02 Thursday
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Contents

Federal Register

Vol. 67, No. 109

Thursday, June 6, 2002

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 67, No. 109
Thursday, June 6, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–021–1]

Tuberculosis in Cattle and Bison; State and Zone Designations; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing the split-State status of Texas and classifying the entire State as modified accredited advanced. This action is necessary to help prevent the spread of tuberculosis because Texas no longer meets the requirements for split-State status. In this document, we are also soliciting comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program.

DATES: This interim rule was effective June 3, 2002.

Compliance Date: The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of Texas is January 1, 2003 (see ''Delay in Compliance'' under **SUPPLEMENTARY INFORMATION**). The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of Texas was June 3, 2002.

Comment Date: We will consider all comments that we receive on or before August 5, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–021–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–021–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–021–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In an interim rule published in the **Federal Register** and effective on November 22, 2000, (65 FR 70284–70286, Docket No. 99–092–1), we recognized two separate zones with different classifications in Texas. Portions of El Paso and Hudspeth Counties were classified as a modified accredited advanced zone, and the remainder of the State was classified as an accredited-free zone.

Recently, two tuberculosis-affected herds (a beef herd in the summer of 2001 and a dairy herd in the fall of 2001) were detected in the accredited-free zone of Texas. Under the regulations in § 77.7(c), if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. Therefore, we are amending the regulations by removing the split-State status of Texas and classifying the entire State as modified accredited advanced.

The two affected herds detected in the former accredited-free zone in Texas have been depopulated and a complete epidemiological investigation into the potential sources of the disease has been

conducted. In addition, we have heightened our surveillance activities at slaughtering plants in Texas and in the surrounding States. We will continue increased surveillance activity for up to 20 years after the State (or any future zone) has been classified accredited free.

Under the regulations in § 77.10, cattle or bison that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

- The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.10(a));
- The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification (§ 77.10(b));
- The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.10(c)); or
- The cattle or bison are sexually intact animals, are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.10(d)).

Delay in Compliance

Nationally, most animals that are moved interstate are sexually intact heifers moving to feedlots or steers and spayed heifers. Prior to this interim rule, the identification requirements for such animals found in §§ 77.10(b) and 77.10(d) applied only to approximately 120 cattle moved annually from the small modified accredited advanced zone in Texas. However, this interim rule's classification of the entire State of Texas as modified accredited advanced will necessitate the identification of all sexually intact heifers moving from Texas to feedlots (both approved feedlots and other feedlots) and all steers and spayed heifers moving interstate from Texas to destinations other than an approved slaughtering establishment. Approximately 3 million cattle per year are moved interstate from Texas.

Given the large number of animals that will now require identification before being moved interstate from Texas, we recognize that additional time will be needed before full compliance with the identification requirements of §§ 77.10(b) and 77.10(d) can be achieved. Identification devices must be obtained, the procedures and processes for numbering the identification must be developed, and a new State-Federal system to record the data from the identification may need to be developed, if the existing State-Federal system is not adequate to deal with the volume of cattle. Once the system of identification is developed, it must be communicated to the State and Federal animal health officials and the industry before it can be coordinated and implemented. Since the system and procedures to be implemented have not yet been determined, we do not know if any new information collection or recordkeeping requirements will be necessary.

The primary purpose of the identification requirements in §§ 77.10(b) and 77.10(d) is to allow for traceback in the event an animal is determined to be infected with or exposed to tuberculosis. If an animal is found to be infected with or exposed to tuberculosis in slaughter channels, it is necessary for control and eradication purposes to be able to identify the premises from which the animal originated as well as the places it has moved through since. Individual unique identification provides the most effective traceback capability. However, if an animal is moved from its premises of origin without identification, the value of any individual identification that might be applied at some later point is diminished. Because most of Texas held accredited free status prior to this interim rule, animals that have been moved from their premises of origin into channels leading to slaughter have not been required to be identified. Animal health officials in Texas have suggested, and we agree, that identification efforts should be concentrated on animals that are still on their premises of origin. Those officials expect that all animals that have already been moved from their premises of origin will have completed their movement through normal industry channels by January 1, 2003.

Therefore, in the former accredited-free zone that encompassed most of Texas, we are delaying the date of compliance with the following interstate movement requirements of § 77.10 until January 1, 2003:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

The identification requirements of §§ 77.10(b) and 77.10(d) will remain in place under a memorandum of understanding with the State of Texas for animals in the former modified accredited advanced zone in El Paso and Hudspeth Counties. All other applicable provisions of the regulations will be in effect as of the effective date of this rule.

Request for Comments

In addition to requesting comments on this specific change in the tuberculosis classification status of Texas, we are requesting comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program. Based on our experience enforcing the regulations, on information received from the public, and on the availability of new testing strategies and disease prediction models, we are examining whether certain changes to the regulations would be appropriate.

Although we are inviting comments on all regulatory aspects of the domestic tuberculosis eradication program, we are particularly seeking comment on the following issues, which are discussed at greater length below:

- Identification requirements associated with the interstate movement of sexually intact heifers;
- Timeframes for tuberculosis prevalence in determining a State or zone's qualification for a particular disease risk status;
- Appropriate exceptions to disease prevalence levels governing a State or zone's status when there are a limited number of herds in a State or zone; and
- Conditions under which animals could be moved from nonaccredited areas without incurring an unacceptable risk of spreading tuberculosis.

The risk of an animal spreading tuberculosis is much higher in breeding animals than in animals destined for slaughter. Heifers are currently considered as breeding animals because they are sexually intact. However, heifers that move through feedlots could be destined for slaughter without being bred. The regulations do not distinguish between heifers intended for breeding and heifers destined for slaughter. Therefore, we are asking for comments on distinguishing between the destination of heifers and where in the movement process to apply any identification. We are also requesting comments on what type of

identification, such as applying brands to heifers destined for slaughter, could be used to distinguish the destination of heifers.

The regulations stipulate the periods of time States or zones must retain certain tuberculosis prevalence levels to qualify for a particular risk classification, which vary depending on the risk classification and other factors. For example, § 77.9(f) provides that, to qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate, among other things, that it has zero percent prevalence of affected cattle and bison herds and has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years. However, the requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by the Animal and Plant Health Inspection Service.

Based on recently developed tuberculosis disease models that use mathematical simulation to predict the occurrence and spread of disease, we believe it may be necessary to reevaluate our criteria for advancing from one State or zone classification to the next to determine if appropriate timeframes and prevalence levels are being used. Therefore, we are asking for scientific data on whether the timeframes and disease prevalence levels currently being used to classify the tuberculosis risks in States and zones are appropriate and, if not, what timeframes and disease prevalence levels would be appropriate for each classification.

Although risk classifications are based on tuberculosis prevalence levels as set forth in the regulations, the regulations also provide for exceptions to those prevalence levels in cases where a State or zone has a limited number of herds. When the number of herds in a State or zone is less than 10,000 for modified accredited status or less than 30,000 for modified accredited advanced status, disease prevalence may be based on an absolute value of 10 or 3 affected herds, respectively, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone. In addition to comments on the timeframes and disease prevalence criteria, we are asking for scientific data for using different numbers of herds and for other approaches that will give us the same level of confidence that a State or zone is at the appropriate disease prevalence level for the risk classification.

Finally, we are asking for comments on allowing the interstate movement of animals from nonaccredited areas if there are mitigating factors in place, and we are asking for comments on what those mitigating factors should include. Currently, the regulations do not allow cattle or bison to be moved interstate from nonaccredited States or zones. However, because new testing strategies and new models are now available that better predict infection within a State or zone and the ability for that infection to move out of the State or zone, we are inviting comments on whether interstate movement from nonaccredited States or zones could be allowed under certain conditions without an undue risk of the spread of tuberculosis and what those conditions might be.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive regarding this rule's reclassification of the State of Texas and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Prior to this rule, the majority of Texas was listed as an accredited-free zone, and the remaining portion was listed as a modified accredited advanced zone. Under this rule, the entire State of Texas is reclassified as modified accredited advanced.

The *1997 Census of Agriculture* reports that there are 144,354 farms in Texas with cattle and calves. Statistics on the number of farms in Texas with bison were not available, but the number is believed to be very small. While it can be assumed that the majority of these farms are located within the former accredited-free zone that encompassed most of Texas, the number of farms that move animals interstate is unknown. However, cattle operators commonly move their animals interstate for breeding, slaughter, or feeding. In fact, approximately 3 million cattle are moved interstate from the State of Texas each year.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The businesses primarily affected by this rule are cattle owners in Texas, most of whom are small in size. Based on data from the *1997 Census of Agriculture,* the average cattle and calf sales per farm for all 144,354 farms in Texas with cattle inventories was $49,650, well below the U.S. Small Business Administration's criterion of $750,000 in annual sales for businesses primarily engaged in cattle farming. Of the 144,354 farms in Texas with cattle inventories in 1997, 92 percent had herds of fewer than 200 cattle.

This rule potentially affects all cattle and bison herd owners in Texas who are located in the former accredited-free zone in that State and who move cattle or bison interstate. Herd owners affected by this rule will see additional interstate movement requirements and associated costs. The tuberculin tests for sexually intact animals and official identification of certain animals will result in minimal costs to the herd owner.

The total cost for tuberculin tests will depend on the number of animals that are being moved interstate. The average cost of the tuberculin test is about $380 per herd. The cost per animal varies depending on the size of the herd. For an average-sized herd of 101 animals, the average cost would be approximately $3.76 per animal. Assuming that 5 percent of the cattle in the average-sized herd are sexually intact animals that move interstate, tuberculin testing for such animals would cost approximately $19 per herd.

Herd owner costs for applying official identification or premises of origin identification should also be minimal. Herd owners can apply approved premises of origin identification without the services of a veterinarian. The cost of each eartag is about 4 cents, and the cost of the eartag applicator is only about $12. Assuming that 10 percent of the cattle in the average-sized herd are

moved interstate and require identification, the cost of materials for individual identification would be only about 40 cents per herd.

We do not expect that the increased costs stemming from this rule will have a significant economic impact on herd owners. The cost increases are small when compared to the overall value of the animals. According to *Agricultural Statistics 2001,* the average value per head for all 13.7 million cattle and calves in Texas was $610. The approximate $3.76 cost per animal for the tuberculin testing and the 4-cent cost per animal for identification are equivalent to less than 1 percent of the per-head value of the animals.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

2. In § 77.7, paragraph (b) is revised to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) The following are accredited-free zones: None.

* * * * *

3. In § 77.9, paragraphs (a) and (b) are revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Texas.

(b) The following are modified accredited advanced zones: None.

* * * * *

Done in Washington, DC, this 3rd day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–14197 Filed 6–5–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 02–09]

RIN 1557–AB95

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1099]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 369

RIN 3064–AC36

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the ''Agencies'') are amending their uniform regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) to effectuate the amendment contained in section 106 of the Gramm-Leach-Bliley Act of 1999. Section 109 prohibits any bank from establishing or acquiring a branch or branches outside of its home State under the Interstate Act primarily for the purpose of deposit production, and provides guidelines for determining whether such bank is reasonably helping to meet the credit needs of the communities served by these branches. Section 106 of the Gramm-Leach-Bliley Act of 1999 expanded the coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-State bank holding company. This final rule amends the regulatory prohibition against branches being used as deposit production offices to include any bank or branch of a bank controlled by an out-of-State bank holding company, including a bank consisting only of a main office.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428; Kathryn Ray, Counsel, Community and Consumer Law Division, (202) 874–5750; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or with respect to foreign banks, Martha Clarke, Acting Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

Board: Michael J. O'Rourke, Counsel, Legal Division, (202) 452–3288; Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs, (202) 452–3946; or with respect to foreign banks, Ann E. Misback, Assistant General Counsel, Legal Division, (202) 452–3788.

FDIC: Louise Kotoshirodo Kramer, Policy Analyst, Division of Compliance and Consumer Affairs, (202) 942–3599; or Mark Mellon, Counsel, Supervision and Legislation Section, (202) 898–3884.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

F. Plain Language

I. Background

The Interstate Act [1] provides expanded authority for a domestic or foreign bank to establish or acquire a branch in a State other than the bank's home State. Section 109 of the Interstate Act requires the Agencies to prescribe uniform rules that prohibit the use of the Act's interstate branching authority primarily for the purpose of deposit production.[2] Congress enacted section 109 to ensure that the new interstate branching authority provided by the Interstate Act would not result in the taking of deposits from a community without banks reasonably helping to meet the credit needs of that community. *See* H.R. Conf. Rep. No. 103–651, at 62 (1994).

As required by section 109, the Agencies issued a joint final rule implementing section 109, 62 FR 47728 (September 10, 1997). This rule provides that, beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the appropriate agency will determine whether the bank satisfies a loan-to-deposit ratio screen [3] that has been established by section 109.

If the bank's statewide loan-to-deposit ratio is at least 50 percent of the host State loan-to-deposit ratio, no further analysis is required. If, however, the appropriate agency determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host State loan-to-deposit ratio, then the agency must perform a credit needs determination.[4] Under the credit needs determination, the appropriate agency reviews the activities of the bank, such as its lending activity and its performance under the Community Reinvestment Act (CRA), and determines whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State.

A bank that fails the loan-to-deposit ratio screen and that receives a determination that it is not reasonably helping to meet the credit needs of the communities served by the bank's interstate branches could be subject to sanctions under section 109.

Section 106 of the Gramm-Leach-Bliley Act of 1999 (GLBA), Public Law 106–102, 113 Stat. 1338 (November 12, 1999), amends section 109 by changing the definition of an ''interstate branch'' to include any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956 (BHC Act)). This joint final rule conforms the Agencies' uniform regulations to the GLBA amendment.

II. Overview of the Comments Received

On April 9, 2001, the Agencies published a notice of proposed rulemaking in the **Federal Register** (66 FR 18411). The Agencies received four comments on the proposal. Two of the comments were from trade associations and two were from banks.

There were no objections to the proposed rule and three of the comments generally supported it. One commenter noted that the rule simply effectuates the amendments required by the GLBA. Another commenter stated that the amendment supports the efforts of community banks and the needs of businesses and consumers they serve.

One commenter believed that the proposal should cover institutions that use brokers to market their certificates of deposit in communities where the institution has no intention of lending. The Agencies believe that such coverage goes beyond the scope of section 109 of the Interstate Act as amended. Thus, the Agencies have not made any changes from the proposal in response to this comment.

While not objecting to the rule, one commenter raised a question about the definition of a bank holding company's ''home State.'' Section 106 of the GLBA incorporated by reference the BHC Act definition of ''out-of-State bank holding company.'' The proposed rule therefore tracked the BHC Act definition. It provided that the home State of a bank holding company is the State where the total deposits of all the banking subsidiaries were the largest as of the later of July 1, 1966 or the date on which the company becomes a bank holding company. The commenter noted that because deposit levels change over time, using this definition to determine the home State of a bank holding company would lead to distortions that would become more and more pronounced. However, as the commenter recognized, the Agencies are obligated to use the Bank Holding Company Act's definition due to its incorporation into section 106 of the GLBA.[5]

III. Analysis of the Joint Final Rule

As discussed in the Background section, section 109 prohibits the use of the interstate banking and branching authority granted by the Interstate Act to engage in interstate branching primarily for the purpose of deposit production. Prior to the GLBA, this prohibition applied to any bank that established or acquired, directly or indirectly, a branch under the authority of the Interstate Act or amendments to any other provision of law made by the Interstate Act. In accordance with the amendment to section 109 adopted by the GLBA, the final rule broadens this prohibition to apply not only to branches established pursuant to the Interstate Act, but also to any bank or branch of a bank controlled by an out-of-State bank holding company. Thus, the final rule amends the definition of the term ''covered interstate branch'' to include any bank or branch of a bank controlled by an out-of-State bank holding company. We also have made conforming changes to our respective regulations [6] to revise the definition of ''host State'' and to clarify that the loan-to-deposit ratio screen will be applied to a bank, or branch of a bank, controlled by an out-of-State bank holding company in the same manner as the screen is applied to a covered interstate branch. The final rule is substantively identical to the proposed rule. We have made only technical changes to each agency's proposed regulations.

A. Bank Locations Subject to Section 109 as Amended

Prior to the GLBA, section 109's deposit production office prohibition applied only to an interstate branch in a host State that is acquired or

[1] Pub. L. 103–328, 108 Stat. 2338.

[2] 12 U.S.C. 1835a.

[3] The loan-to-deposit ratio screen compares a bank's loan-to-deposit ratio within the State where the bank's covered interstate branches are located (statewide loan-to-deposit ratio) with the loan-to-deposit ratio of all banks chartered or headquartered in that State (host State loan-to-deposit ratio). Host State loan-to-deposit ratios, based on reasonably available data, are jointly published by the Agencies every year.

[4] A credit needs determination also would be performed if the appropriate agency determines that there is no reasonably available data that permits the agency to determine the bank's statewide loan-to-deposit ratio.

[5] The same commenter reiterated certain comments it previously made in the original rulemaking implementing section 109, 62 FR 47728 (September 10, 1997). The commenter noted that the Agencies use Summary of Deposit Reports and Call Reports to produce the annual host State loan-to-deposit ratios. The commenter does not believe that the method used to calculate the host State loan-to-deposit ratios is accurate. The commenter suggested that the Agencies should require banks to report deposits and loans by State and that many banks would already have this information available. Additionally, the commenter stated that use of the June 30th Call Reports to calculate ratios may understate agricultural loan volume, which peaks in the September 30th Call Report. The commenter recommended that the Agencies take the cyclical nature of agricultural lending into consideration when calculating these ratios. Both of these comments are beyond the scope of the current rulemaking.

[6] See 12 CFR 25.62(e) and 25.63(a) (OCC); 12 CFR 208.7(b)(4) and 208.7(c)(1) (Federal Reserve); 12 CFR 369.2(d) and 369.3(a) (FDIC).

established by an out-of-State bank pursuant to the Interstate Act or any amendment made by the Interstate Act. As amended, the prohibition also applies to any branch of a bank controlled by an out-of-State bank holding company. The legislative history of this amendment indicates that Congress intended that this amendment would expand the scope of section 109 to cover any bank or branch of a bank controlled by an out-of-State bank holding company, as discussed below.

1. Coverage of Banks' Main Offices

Coverage of the final rule extends to banks controlled by out-of-State bank holding companies, including banks consisting only of a main office. The Agencies determined that extension of the regulation to cover a bank's main office, whether or not the bank also has branches, is appropriate because the purpose of the legislation is to prevent out-of-State bank holding companies from taking deposits out of a community without helping to meet the credit needs of that community. *See* 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999); 145 Cong. Rec. H5217 (daily ed. July 1, 1999); 144 Cong. Rec. H3133 (daily ed. May 13, 1998). This purpose would be negated if banks consisting only of a main office were excluded. For example, out-of-State bank holding companies could take deposits from a host State simply by establishing separately chartered, single-office banks in a host State. Therefore, banks consisting only of a main office and controlled by an out-of-State bank holding company are subject to the joint final rule.

2. Coverage of Interstate and Intrastate Branches

The amendment to section 109 expands the scope of the rule to include all branches of a bank that is controlled by an out-of-State bank holding company. Indeed, Congress intended to apply the section 109 rule to ''all branches of a bank owned by an out-of-State holding company,'' not just to previously exempt branches owned by such banks. *See* H.R. Rep. No. 106–74, pt. 1 at 128 (1999) (emphasis added). Thus, the final rule applies to all branches of a bank when the bank and its controlling bank holding company have different home States.

B. Multi-Tier Bank Holding Companies

Section 106 of the GLBA expands the definition of ''interstate branch'' to any branch of a bank controlled by an out-of-State bank holding company and incorporates by reference the BHC Act definition of an ''out-of-State bank holding company.'' 12 U.S.C. 1841(o)(7). We have used the BHC Act definition of ''control'' to determine the controlling bank holding company. This is the top tier bank holding company in a multi-tier bank holding company structure.

C. Definition of ''Home State'' for a Bank Holding Company

The BHC Act defines ''home State'' with respect to a bank holding company as the State where total deposits of all banking subsidiaries of each bank holding company are the largest on the later of July 1, 1966 or the date on which a company becomes a bank holding company. 12 U.S.C. 1841(o)(4). To determine the home State of a bank holding company, the Agencies will determine, from sources available at the Agencies, the State where the total deposits of all the banking subsidiaries were the largest as of the later of July 1, 1966, or the date the bank holding company was formed. We recognize that, in certain cases, the State where the total deposits of all of a bank holding company's subsidiary banks were largest on July 1, 1966, or at the date of formation of the bank holding company, may not be the same State in which the bank holding company's subsidiary banks hold the largest amount of deposits now or at a future date. However, the amendment to section 109 made by the GLBA adopts the BHC Act definition of ''out-of-State bank holding company,'' and the BHC Act definition of ''home State'' is incorporated into that definition.

D. Foreign Banks and Branches

Section 106 of the GLBA also necessitates an amendment to the definition of ''home State'' for foreign banks with banking operations in the United States. Under U.S. banking law and regulation, foreign banks may be treated as banking institutions, bank holding companies, or both, depending on the nature of their operations in the United States. For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, a foreign bank's home State is determined under section 5 of the International Banking Act of 1978 (12 U.S.C. 3103), § 211.22 of the Federal Reserve's Regulation K (12 CFR 211.22), § 28.11(o) of the OCC regulations, and § 347.202(j) of the FDIC regulations. For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, a foreign bank's home State is determined in accordance with 12 U.S.C. 1841(o)(4) as discussed above in section III. C. of this preamble regarding U.S. bank holding companies. A foreign bank may have different home States with respect to direct offices and subsidiary banks.

E. Impact of the Rule

The final rule is unlikely to have any impact on the vast majority of banks. Consistent with section 109 when it was first enacted, the final rule does not impose any new recordkeeping requirements on affected institutions. We use existing data to determine the loan-to-deposit ratio screen.

Moreover, there is no additional burden imposed as a result of the credit needs determination. In order to make that determination, the appropriate agency will review the activities of the bank, such as its lending activity and its performance under the CRA,[7] and evaluate whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State.

The only circumstance in which the final rule would impose a burden on a bank is if the bank fails both the loan-to-deposit ratio screen and the credit needs determination. Accordingly, while the statutory amendment and this final rule extend the scope of the DPO rule, this extended scope is unlikely to affect most institutions.

IV. Regulatory Analysis

A. Paperwork Reduction Act

The Agencies have determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC

[7] Some entities that could be subject to section 109, including certain special purpose banks and uninsured branches of foreign banks, are not evaluated for CRA performance by the Agencies. For such entities, we will continue to use the CRA regulations as a guideline in making a credit needs determination. The CRA regulations provide only guidance to assess whether activities identified by these institutions help to meet the community's credit needs, and do not obligate these institutions to have a record of performance under the CRA or require that these institutions pass any performance tests in the CRA regulations. We also will continue to give substantial weight to the factor relating to specialized activities in making a credit needs determination for institutions not evaluated under the CRA. For example, most branches of foreign banks derive substantially all their deposits from wholesale deposit markets, which are generally national or international in scope. This approach is consistent with section 109's overall purpose of preventing banks from using the Interstate Act to establish branches primarily to gather deposits in their host State without reasonably helping to meet the credit needs of the communities served by the bank in the host State. See Prohibition Against Use of Interstate Branches Primarily for Deposit Production, 62 FR 47728, 47732–33 (September 10, 1997) (codified at 12 CFR parts 25, 208, 211, 369).

certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule would extend coverage of section 109 to some additional institutions, including small entities. However, based on previous examination experience, we expect very few institutions will experience any cost in connection with complying with the rule. Review for compliance with section 109 is conducted at the same time that the Community Reinvestment Act review is performed. Section 109 requires that the Agencies use only available information to conduct their analyses. Consistent with this requirement, this final rule does not impose any additional paperwork or regulatory reporting requirements. Accordingly, we have concluded that the final rule would not have a significant economic impact on a substantial number of small entities.

BOARD: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule would extend coverage of section 109 to some additional institutions, including small entities. Review for compliance with section 109 is conducted at the same time that the Community Reinvestment Act review is performed. Consistent with the requirement that the Agencies use only available information to conduct a section 109 review, the final rule does not impose any additional regulatory burden on banks beyond what is required by statute. The burden to conduct the review and use only available data is on the banking regulatory Agencies. Thus, the final rule will not have a significant economic impact on a substantial number of small entities.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule would extend coverage of section 109 to some additional institutions, including small entities. However, based on previous examination experience, we estimate that one or fewer institutions per year will experience any cost in connection with complying with the rule. Thus, the final rule will not have a significant economic impact on a substantial number of small entities.

C. OCC Executive Order 12866

The OCC has determined that its portion of the final rule is not a significant regulatory action under Executive Order 12866.

D. OCC Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681.

F. Plain Language

Section 722 of the GLBA (12 U.S.C. 4809) requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Toward this end we have used a variety of ''plain language'' techniques such as topical headings, a table of contents, and the use of pronouns as appropriate. We specifically invited comments on how to make the changes proposed by this rulemaking easier to understand. No commenters addressed this issue. Accordingly, we made no changes to the proposed style or format.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 369

Banks, banking, Community development.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of the Comptroller of the Currency amends part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

2. In § 25.62:

A. Paragraphs (b), (d), and (e) are revised;

B. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; and

C. A new paragraph (g) is added to read as follows:

§ 25.62 Definitions.

* * * * *

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

* * * * *

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank, (2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of

such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

* * * * *

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

* * * * *

3. In § 25.63, paragraph (a) is revised to read as follows:

§ 25.63 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

* * * * *

Dated: April 23, 2002

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

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

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

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. In § 208.7, redesignate existing paragraphs (b)(6) and (b)(7) as (b)(7) and (b)(8), respectively, revise paragraphs (b)(2), (b)(3), (b)(4) and (c)(1), and add new paragraph (b)(6) to read as follows:

§ 208.7 Prohibition against use of interstate branches primarily for deposit production.

* * * * *

(b) * * *

(2) *Covered interstate branch* means:

(i) Any branch of a State member bank, and any uninsured branch of a foreign bank licensed by a State, that:

(A) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(B) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(2)(i) of this section; and

(ii) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(3) *Home State* means:

(i) With respect to a State bank, the State that chartered the bank;

(ii) With respect to a national bank, the State in which the main office of the bank is located;

(iii) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the company becomes a bank holding company under the Bank Holding Company Act.

(iv) With respect to a foreign bank:

(A) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22; and

(B) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(*1*) July 1, 1966; or

(*2*) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(4) *Host State* means a State in which a covered interstate branch is established or acquired.

* * * * *

(6) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

* * * * *

(c)(1) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the Board will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 30, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 369 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 369—PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

1. The authority citation for part 369 continues to read as follows:

Authority: 12 U.S.C. 1819 (Tenth) and 1835a.

2. In § 369.2, redesignate paragraphs (f) and (g) as (g) and (h), respectively; revise paragraphs (b), (c) and (d); and add new paragraph (f) to read as follows.

§ 369.2 Definitions.

* * * * *

(b) *Covered interstate branch* means:

(1) Any branch of a State nonmember bank, and any insured branch of a foreign bank licensed by a State, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 347.202(j); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(d) *Host State* means a State in which a covered interstate branch is established or acquired.

* * * * *

(f) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

* * * * *

3. In § 369.3, revise paragraph (a) to read as follows:

§ 369.3 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the FDIC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 1st day of March, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–14130 Filed 6–5–02; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–43–AD; Amendment 39–12768; AD 2002–11–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models E55, E55A, A56TC, 58, 58A, 58P, 58PA, 58TC, and 58TCA Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models E55, E55A, A56TC, 58, 58A, 58P, 58PA, 58TC, and 58TCA airplanes. This AD requires you to inspect the Instrument Subpanel electroluminescent panel retaining screw for proper length and the rotating beacon circuit breaker switch (or any other switch in the same location) for damage and replace any screw or circuit breaker switch as necessary. This AD is the result of a report that an improper length electroluminescent panel retaining screw damaged the rotating beacon circuit breaker switch, which resulted in damaged wiring. The actions specified by this AD are intended to prevent damage to the rotating beacon circuit breaker switch or any other switch in the same location because of an incorrect length electroluminescent panel retaining screw. This condition could result in failure of the circuit breaker and lead to smoke and/or fire in the cockpit.

DATES: This AD becomes effective on July 15, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 15, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE–43-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Raytheon notified FAA of an incident where the pilot had to return to the departing airport after declaring an emergency because of smoke in the cockpit. After investigation, FAA determined that the cause of smoke in the cockpit was a result of damage to the rotating beacon circuit breaker switch caused by an improper length electroluminescent panel retaining screw. The damaged circuit breaker switch failed to shutdown the electrical current to the rotating beacon. Failure of the circuit breaker switch caused the wiring to burn through the insulation and the other wires in the wire bundle that were routed with the wiring to the rotating beacon circuit breaker switch.

What Is the Potential Impact if FAA Took no Action?

This condition, if not corrected, could result in failure of the rotating beacon circuit breaker switch or any other switch in the same location. Failure of the circuit breaker switch could result in smoke and/or fire in the cockpit.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models E55, E55A, A56TC, 58, 58A, 58P, 58PA, 58TC, and 58TCA airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 31, 2002 (67 FR 4683). The NPRM proposed to require you to:

—Inspect the Instrument Subpanel electroluminescent panel for the installation of a rotating beacon circuit breaker switch or any other switch installed directly above the electroluminescent panel retaining screw;

—Inspect the installed switch for damage;

—Replace any damaged switch;

—Inspect the electroluminescent panel retaining screw to ensure correct length; and

—Replace any incorrect length electroluminescent panel retaining screw with a part number (P/N) MS35214–24 screw.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

What Are the Differences Between This AD and the Service Information?

Raytheon Mandatory Service Bulletin No. SB 33–3452, Issued: May, 2001, is applicable to Models E55, A56TC, 58, 58P, and 58TC airplanes. We have expanded the applicability of this AD to include Models E55A, 58A, 58PA, and 58TCA airplanes. The serial number ranges of the affected models indicated in the service information include these models as indicated on Type Certificate Data Sheet 3A16, dated January 15, 2000.

Raytheon Mandatory Service Bulletin No. SB 33–3452, Issued: May, 2001, specifies that you accomplish the inspection within 25 hours time-in-service (TIS) or 10 days after the effective date of the AD. We require that you inspect within 100 hours TIS after the effective date of this AD.

We do not have justification to require this action within 25 hours TIS. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 1,636 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	$98,160

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180	$1 for a new electroluminescent panel retaining screw. $40 for a new circuit breaker switch	$180 + applicable replacement part(s) cost.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–11–07 Raytheon Aircraft Company: Amendment 39–12768; Docket No. 2001–CE–43–AD.

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

Model	Serial Nos.
E55 and E55A	TE–768 through TE–1201.
A56TC	TG–84 through TG–94.
58 and 58A	TH–1 through TH–1388 and TH–1390 through TH–1395.
58P and 58PA	TJ–3 through TJ–435 and TJ–437 through TJ–443.
58TC and 58TCA	TK–1 through TK–146 and TK–148 through TK–150.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent damage to the rotating beacon circuit breaker switch or any other switch in the same location because of an incorrect length electroluminescent panel retaining screw. This condition could result in failure of the circuit breaker and lead to smoke and/or fire in the cockpit.

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

Actions	Compliance	Procedures
(1) Inspect the Instrument Subpanel electroluminescent panel for the installation of a rotating beacon circuit breaker switch or any other switch directly above the lower electroluminescent panel retaining screw. (i) If a blanking plug is installed above the lower electroluminescent panel retaining screw, ensure that the correct length screw is installed. The correct length is 0.28 to 0.31 inches (ii) If the screw is not the correct length, install part number (P/N) MS35214–24 or FAA-approved equivalent part number (iii) If a rotating beacon circuit breaker switch or any other switch is installed, inspect the switch for damage.	Within the next 100 hours time-in-service (TIS) after July 15, 2002 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 33–3452, Issued: May, 2001.
(2) Replace any damaged switch found during the inspection required in paragraph (d)(1)(iii) of this AD and replace the electroluminescent panel retaining screw if it is not 0.28 to 0.31 inches in length with a P/N MS35214–24 screw or FAA-approved equivalent part number.	Prior to further flight after the inspection required by paragraph (d)(1)(iii) of this AD.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 33–3452, Issued: May, 2001.
(3) Do not install any electroluminescent panel retaining screw in the lower part of the Instrument Subpanel (underneath the circuit breaker switches) that is not P/N MS35214–24 or FAA-approved equivalent part number.	As of July 15, 2002 (the effective date of this AD).	Not applicable.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 33–3452, Issued: May, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 15, 2002.

Issued in Kansas City, Missouri, on May 23, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13764 Filed 6–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–17–AD; Amendment 39–12769; AD 2002–11–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211 Trent 875, 877, 884, 892, 892B, and 895 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines with certain part number (P/N) low pressure compressor (LPC) fan blades installed. This action requires initial and repetitive ultrasonic inspection of the fan blade dovetail roots. This amendment is prompted by the loss of an LPC fan blade during takeoff. The actions specified in this AD are intended to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane.

DATES: Effective June 21, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 5, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–17–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31, Derby DE24 6BJ, UK; Telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines with certain P/N LPC fan blades installed. The CAA advises there has been an incident involving the loss of an LPC fan blade during takeoff. The release of the blade occurred as the result of the initiation and propagation of a crack in the LPC fan blade root, convex side, located on either side of the shear key slot. A subsequent ''around the fleet inspection'' revealed a similar condition in four additional LPC fan blades. The effects of dry film lubrication and improved blade root lubrication (Metco 58) were determined to be critical in preventing the initiation of cracking in the root of the LPC fan blade. In addition, blade root configurations, airplane type, and engine ratings were found to affect initial and repetitive inspection requirements.

Manufacturer's Service Information

RR has issued service bulletin (SB) RB.211–72–D344, Revision 4, dated March 15, 2002, that provides procedures to ultrasonic-inspect the blade root on LPC fan blades. The CAA classified this service bulletin as mandatory and issued AD 001–02–2001, dated February 2, 2000, in order to assure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

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

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines of the same type design, this AD is being issued to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane. This AD requires ultrasonic inspection of the dovetail roots of LPC fan blades P/N's FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–17–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

2002–11–08 Rolls-Royce plc: Amendment 39–12769. Docket No. 2001–NE–17–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines with low pressure compressor (LPC) fan blades, part numbers (P/N's) FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, installed. These engines are installed on, but not limited to, Boeing Company 777 series airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane, do the following:

(a) Ultrasonic-inspect and disposition the dovetail roots of LPC fan blades, P/N's FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, that are removed from the engine, in accordance with 3.A.(1) through 3.A.(5) or, for blades that are not removed from the engine, in accordance with 3.B.(1) through 3.B.(5) of the Accomplishment Instructions of RR service bulletin (SB) RB.211–72–D344, Revision 4, dated March 15, 2002.

(b) For blades P/N's FK30838, FK30840, and FK30842, that have not been relubricated using either RR SB RB.211–72–D344 or RB.211–72–D347, during any interval exceeding 600 cycles-since-new (CSN) or cycles-since-rework (CSR), inspect in accordance with paragraph (a) of this AD and within the compliance times specified in the following Table 1:

TABLE 1

Engine series	Boeing 777 series (IGW)	Airplane maximum gross weight (times 1000 pounds)	Initial inspection (CSN)	Repetitive inspection (cycles-since-last-inspection (CSLI)
(1) −892	−300	(i) 660 and 632.5 (ii) 580	600 2,000	80 600
(2) −884, −892, −892B, and −895	−200 with IGW	(i) 632.5 and 648 (ii) 656 (iii) 555	1,200 600 2,000	100 80 600
(3) −875	−200	535	2,000	600
(4) −877	−200	545	2,000	600

(c) For blades P/N's FK30838, FK30840, and FK30842, that have been relubricated at intervals not exceeding 600 CSN or CSR using either RR SB RB.211–72–D344 or SB RB.211–72–D347, inspect in accordance with paragraph (a) of this AD and within the compliance times specified in the following Table 2:

TABLE 2

Engine series	Boeing 777 series (IGW)	Airplane maximum gross weight (times 1000 pounds)	Initial inspection (CSN)	Repetitive inspection (cycles-since-last-inspection (CSLI)
(1) −892	−300	(i) 660 and 632.5 (ii) 580	600 2,400	80 600
(2) −884, −892, −892B, and −895	−200 with IGW	(i) 632.5 and 648 (ii) 656 (iii) 555	2,400 600 2,400	100 80 600
(3) −875	−200	535	2,400	600
(4) −877	−200	545	2,400	600

(d) For blades P/N's FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at greater than 600 CSN or since previous rework, or that have not been relubricated during any interval exceeding 600 CSN or CSR using either RR SB RB.211–72–D344 or RB.211–72–D347 requirements, inspect in accordance with paragraph (a) of this AD and within the compliance times specified in the following Table 3:

TABLE 3

Engine series	Boeing 777 series (IGW)	Airplane maximum gross weight (times 1000 pounds)	Initial inspection (CSN)	Repetitive inspection (CSLI)
(1) −892	−300	(i) 660 and 632.5 (ii) 580	600 2,000	100 600
(2) −884, −892, −892B, and −895	−200 with IGW	(i) 632.5 and 648 (ii) 656 (iii) 555	1,200 600 2,000	125 100 600
(3) −875	−200	535	2,000	600
(4) −877	−200	545	2,000	600

(e) For blades P/N's FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at fewer than 600 CSN or since previous rework, and that have been relubricated using either RR SB RB.211–72–D344 or SB RB.211–72–D347 at intervals not exceeding 600 CSN or repetitive lubrication, inspect in accordance with paragraph (a) of this AD and within the compliance times specified in the following Table 4:

TABLE 4

Engine series	Boeing 777 series (IGW)	Airplane maximum gross weight (times 1000 pounds)	Initial inspection (CSN)	Repetitive inspection (CSLI)
(1) −892	−300	(i) 660 and 632.5 (ii) 580	600 2,400	100 1,200
(2) −884, −892, −892B, and −895	−200 with IGW	(i) 632.5 and 648 (ii) 656 (iii) 555	2,400 600 2,400	125 100 1,200
(3) −875	−200	535	2,400	1,200
(4) −877	−200	545	2,400	1,200

(f) When engines containing blades P/N's FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175 are moved from one gross weight category to another, the inspection schedule that is applicable to the higher gross weight category must be used.

Optional Terminating Action

(g) Replacement of LPC fan blades P/N's FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175 with a complete set of LPC fan blades that have a P/N that is not listed in this AD constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (e) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 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 done.

Documents That Have Been Incorporated By Reference

(j) The inspection must be done in accordance with Rolls-Royce plc. (RR) service bulletin RB.211–72–D344, Revision 4, dated March 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc P.O. Box 31, Derby DE24 6BJ, UK; Telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 001–02–2001, dated February 2, 2000.

Effective Date

(k) This amendment becomes effective on June 21, 2002.

Issued in Burlington, Massachusetts, on May 27, 2002.

Mark C. Fulmer,

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

[FR Doc. 02–13885 Filed 6–5–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC53

NASA Grant and Cooperative Agreement Handbook—Limitations on Incremental Funding and Deobligations on Grants, and Elimination of Delegation of Closeout of Grants and Cooperative Agreements to Office of Naval Research (ONR); Correction

AGENCY: National Aeronautics and Space Administration

ACTION: Final rule; correction.

SUMMARY: NASA published a final rule document in the **Federal Register** of Tuesday, May 7, 2002 (FR DOC. 02–11167) to revise the threshold for incrementally funding grants and to establish dollar thresholds for incremental funding and funding deobligation actions under grants. This document corrects the RIN number, which was incorrect in that rule.

DATES: Effective on May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Rita Svarcas, NASA Headquarters, Code HC, Washington, DC, (202) 358–0464, e-mail: *rsvarcas@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: In the rule document published on page 30544 in the **Federal Register** of Tuesday, May 7, 2002, The RIN number is corrected to read ''RIN 2700–AC53.''

Scott Thompson,

Acting Assistant Administrator for Procurement.

[FR Doc. 02–14160 Filed 6–5–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 740, 742, 748, 770, 772, and 774

[Docket No. 020502105–2105–01]

RIN 0694–AC61

Revisions and Clarifications to Encryption Controls in the Export Administration Regulations—Implementation of Changes in Category 5, Part 2 (''Information Security''), of the Wassenaar Arrangement List of Dual-Use Goods and Other Technologies

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to reflect changes made to the Wassenaar Arrangement List of dual-use items, and to update and clarify other provisions of the EAR pertaining to encryption export controls. Consistent with the Wassenaar changes, Note No. 3 (''Cryptography Note'') to Category 5—part II (Information Security) of the Commerce Control List (CCL) is amended to allow mass market treatment for all encryption products, including products with symmetric algorithms employing key lengths greater than 64-bits, that previously were not eligible for mass market treatment. As a result, for the first time, mass market encryption commodities and software with symmetric key lengths exceeding 64 bits may be exported and reexported to most destinations without a license under Export Control Classification Numbers (ECCNs) 5A992 and 5D992, following a 30-day review by the Bureau of Industry and Security (BIS) (formerly the Bureau of Export Administration (BXA)). In addition, this rule, for the first time, allows equipment controlled under ECCN 5B002 to be exported and reexported under License Exception ENC. For all other information security items, including encryption source code that would be considered publicly available, this rule updates and clarifies existing notification, review, licensing and post-export reporting requirements. Restrictions on exports and reexports of encryption items to terrorist-supporting states (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria), their nationals and other sanctioned persons (individuals and entities) are not changed by this rule.

DATES: This rule is effective June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Norman E. LaCroix, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone: (202) 482–4439.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2000, the United States updated its encryption export regulations to provide consistent treatment with regulations adopted by the European Union (EU) easing export and reexport restrictions among the 15 EU member states and Australia, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland and Switzerland. Subsequent to the publication of this amendment to the Export Administration Regulations (EAR), the member nations of the Wassenaar Arrangement agreed to remove key length restrictions on encryption hardware and software that is subject to the Cryptography Note (Note No. 3) to Category 5—part II (Information Security) of the Commerce Control List (CCL). This action effectively removed ''mass market'' encryption products from the list of dual-use items controlled by the Wassenaar Arrangement.

The U.S. encryption export control policy continues to rest on three principles: review of encryption products prior to sale, streamlined post-export reporting, and license review of certain exports of strong encryption to foreign government end-users. Consistent with these principles, this amendment updates the U.S. encryption export control policy in several areas.

For ''mass market'' encryption hardware and software products, this rule removes Encryption Item (''EI'') and

National Security (''NS'') controls on such products after a 30-day review As a result of the removal these controls, these items may be exported without regard to any post-shipment reporting requirements. In addition, the standard *de minimis* treatment for foreign products containing such encryption products apply, i.e., exports from a foreign country of foreign-made products containing 25 percent or less of controlled U.S. content are not subject to the EAR, except to embargoed and designated terrorist supporting countries. For other encryption items, this rule clarifies the existing provisions under License Exceptions ENC and TSU. In addition, this rule clarifies existing review requirements for certain encryption items such as commercial encryption products that implement elliptic curve cryptography, perform short-range wireless functions, or incorporate encryption source code that would be considered publicly available. Finally, this rule amends the EAR by adding new paragraph headers, updating cross-references between relevant sections of the EAR, and restructuring existing provisions for clarity.

This rule does not change any other existing licensing requirements for encryption items, including encryption technology and items that provide an open cryptographic interface (OCI).

This action will continue to protect our national security and foreign policy interests without impairing the ability of U.S. companies to compete effectively in global markets. It also will promote secure electronic commerce and privacy, and help to protect our critical infrastructure.

The EAR is amended as follows:

1. *Revised instructions for submitting encryption items for review to determine eligibility under License Exception ENC or for ''mass market'' treatment.* Except to embargoed or designated terrorist supporting countries and sanctioned persons, you may be able to export and reexport your encryption item without a license, after your item is reviewed by the Bureau of Industry and Security (BIS) and the ENC Encryption Request Coordinator. For encryption items under License Exception ENC, and for mass market encryption products with symmetric key length exceeding 64 bits, a review request must contain: (1) A completed BIS–748P hardcopy form or an equivalent electronic SNAP form (both capture general information about the review request, such as the name of the item, manufacturer, ECCN and a brief commodity description), and (2) support documentation containing technical specifications of the item, including answers to the questions set forth in Supplement No. 6 to part 742. To clarify that separate classification by BIS is not required, previous references to ''classification'' in §§ 732.2, 732.3, 734.4, 740.17, 742.15, Supplement No. 6 to Part 742, 748.3 and 770.2 are revised to read ''review''. Exporters are instructed to insert the phrase ''Mass market encryption'' or ''License Exception ENC'' (whichever is applicable) in Block 9 (''Special Purpose'') of the application form. Failure to insert the appropriate phrase may delay receipt of your request by BIS. (For compatibility with current application processing systems, exporters should continue to place an ''X'' in the box marked ''Classification Request'' in Block 5: ''Type of Application''.) A copy of your review request must also be sent to the ENC Encryption Request Coordinator, via courier or mail. Insufficient or missing documentation may delay or interrupt your authority to export and reexport your encryption item. A fax number is now published for review requests submitted to BIS via SNAP. Refer to Supplement No. 6 to part 742 and §§ 740.17(d), 742.15(b)(2) and 748.3(d) for information on submitting encryption review requests.

2. *Clarification of review and notification requirements.* Except as elsewhere specified in the EAR, a license or review by BIS is required for encryption items with symmetric key length exceeding 64 bits. In multiple sections, the EAR is amended to clarify when a review or notification is (or is not) required.

a. *Clarification of when no review or notification is required.* i. *U.S. companies and subsidiaries*. Items controlled under Category 5—part II of the Commerce Control List (ECCNs 5A002, 5B002, 5D002, 5E002, 5A992, 5D992 and 5E992) may be exported and reexported, without review or notification, to U.S. companies and their subsidiaries for internal use, including the development of new products inside and outside the United States by their employees, contractors and interns. Existing restrictions on exports and reexports of encryption items to the countries and foreign nationals of Cuba, Iran, Iraq, Libya, North Korea, Syria or Sudan continue to apply. Refer to §§ 740.17(b)(1) and 742.15(b)(3)(i) of the EAR. Exports and reexports to foreign companies with subsidiary locations in the United States, and to foreign strategic partners of U.S. companies, will continue to be favorably considered under a license or an Encryption Licensing Arrangement (ELA). Refer to § 742.15(a) of the EAR.

ii. *Certain short-range wireless items.* No review or notification is required for short-range wireless products (e.g. with an operating range typically not exceeding 100 meters) that qualify as ''mass market'' and are only controlled under Category 5—part II of the CCL because they incorporate parts or components with encryption functionality specified and limited to short-range wireless functions based on such commercial standards as Bluetooth, Home Radio Frequency (HomeRF) and IEEE 802.11b (''WiFi''). This provision for mass market products is found in § 742.15(b)(3)(ii). A similar existing provision for ''retail'' short-range wireless products continues under License Exception ENC. See § 740.17(b)(3)(iii)(H).

iii. *Certain items with limited use of cryptography.* This rule clarifies that no review or notification is required for information security items which employ limited forms of cryptography, but which do not perform encryption functions (including key management) controlled for ''EI'' reasons under ECCNs 5A002, 5D002 or 5E002. These items are controlled under ECCNs 5A992, 5D992 and 5E992, regardless of bit length or whether they are ''mass market''. *See* § 742.15(b)(3)(iii). Such items include items with cryptographic functions limited to authentication (including secure hash functions and message authentication codes) or digital signature, execution of copy protected software, commercial civil cellular telephones not capable of end-to-end encryption, and ''finance specific'' items specially designed and limited for banking use or money transactions (e.g. highly field-formatted with validation procedures and not easily diverted to other end-uses). Refer to the Related Controls and Technical Notes under ECCN 5A002 in the CCL (part 774 of the EAR) for a complete list of commodities.

Note: Previous references specific to ''finance specific'' items under the ''retail'' provisions of License Exception ENC are removed for clarity (§ 740.17(b)(3)). Products which may have end uses related to financial operations (e.g. supply chain management), but which are not limited by design to banking use or money transactions, remain subject to ''EI'' controls under ECCNs 5A002 and 5D002 and continue to be eligible for export and reexport as ''retail'' encryption commodities and software, after review by BIS under License Exception ENC.

b. *Clarification of when a review is required.* i. *Review under License Exception ENC.* Encryption items controlled under ECCNs 5A002, 5D002 and 5E002, and equipment controlled under ECCN 5B002, require review by BIS prior to export and reexport under

the updated provisions of License Exception ENC (§ 740.17 of the EAR). Once BIS receives the information required for review (as described in Supplement No. 6 to part 742 of the EAR), you may export and reexport all such items (except cryptanalytic items to government end-users) to organizations and companies located or headquartered in the European Union plus eight additional countries. *See* § 740.17(a). Thirty days after BIS registers your review request, you may export and reexport any encryption item, except those which provide an open cryptographic interface (OCI), to any non-government end-user except those in Cuba, Iran, Iraq, Libya, North Korea, Syria or Sudan. In addition, commodities and software that do not qualify as ''mass market'' but which qualify as ''retail'' may be exported and reexported to government end-users, once so authorized by BIS. See § 740.17(b)(3) of the EAR for the treatment of ''retail'' encryption commodities and software, and § 740.17(b)(2) for commodities and software and that are not eligible as retail. Products not eligible as retail require a license to government end-users, except as authorized under § 740.17(a). Encryption technology controlled under ECCN 5E002 and items which provide an OCI are not authorized for export or reexport under § 740.17(b)(2) or (b)(3) and require a license to any end-user outside the countries listed in Supplement No. 3 to part 740. Exports and reexports of products reviewed by BIS under License Exception ENC may require reporting, as described in § 740.17(e). License Exception ENC is amended with new paragraph headers and updated text, for clarity.

ii. *Review for mass market encryption products exceeding 64 bits.* Encryption commodities and software that qualify for ''mass market'' treatment under the Cryptography Note (Note 3) to part II of Category 5 of the CCL, and which implement encryption with symmetric key length exceeding 64-bits, require review by BIS prior to export and reexport. These No License Required (NLR) products are removed from ''EI'' and ''NS'' controls, are controlled under ECCNs 5A992 and 5D992, and remain subject to the EAR. Similar to encryption items under License Exception ENC, you may immediately export and reexport >64 bit mass market encryption products to organizations and companies located or headquartered in the European Union plus eight additional countries. Thirty days after BIS receives your review request, you may export and reexport your mass market encryption product to any end-user (except embargoed or designated terrorist supporting countries and sanctioned persons), without post-export reporting or additional national security review for *de minimis* eligibility. All existing restrictions and licensing requirements to embargoed or designated terrorist supporting countries (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) and sanctioned persons are continued by this amendment. Posting of mass market encryption software on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone would not establish ''knowledge'' of a prohibited export or reexport. In addition, such posting would not trigger ''red flags'' necessitating the affirmative duty to inquire under the ''Know Your Customer'' guidance provided in Supplement No. 3 to part 732 of the EAR. See § 742.15(b)(2) and Supplement No. 6 to part 742 of the EAR for requirements, procedures and instructions for requesting review. See §§ 734.2, 734.3, 734.7, 734.8, 734.9, 740.13, 740.13(d) and 742.15(b) for other revisions to the EAR which reflect these changes in ECCN and reasons for control for >64 bit mass market encryption commodities and software.

c. Clarification of when a notification is required. i. Encryption source code that would be considered publicly available, and corresponding object code. This rule simplifies U.S. export treatment of encryption source code that would be considered publicly available, by allowing all such source code (and corresponding object code) to be exported and reexported under License Exception TSU once notification (or a copy of the source code) is provided to BIS, regardless of whether a fee or royalty is charged for the commercial production or sale of products developed using this software. Refer to § 740.13(e). This rule further clarifies that these license exception provisions do not extend to any encryption software that has not been made publicly available, including such encryption software that incorporates or is specially designed to use publicly available encryption software components (ref: § 740.13(e) (3)). Such encryption software may instead be exported and reexported under License Exception ENC, subject to the terms and conditions set forth in § 740.17 of the EAR. See §§ 740.17(b)(2)(ii) and (iii) for specific provisions relating to such encryption source code and general purpose toolkits. Previous references to commercial encryption source code under License Exception ENC (i.e., § 740.17(b)(4) prior to this amendment) are subsumed by these streamlined and clarified provisions of the EAR.

ii. 56 bit encryption items (including 512-bit asymmetric and 112-bit elliptic curve algorithms), and mass market encryption products not exceeding 64 bits. This rule clarifies that, in addition to mass market encryption commodities and software with key lengths not exceeding 64 bits for the symmetric algorithm, other encryption items with key lengths not exceeding 56 bits for symmetric algorithms, 512 bits for asymmetric key exchange algorithms, and 112 bits for elliptic curve algorithms may be immediately exported and reexported No License Required (except to embargoed or designated terrorist supporting countries and sanctioned persons), upon notification to BIS. See § 742.15(b)(1).

The EAR is further amended by the following revisions:

3. *Clarification of beta test software requirements in License Exception TMP.* In § 740.9 (Temporary imports, exports and reexports (TMP)), existing provisions for beta test encryption software are restructured for clarity, and new paragraph headings are added.

4. *Clarification of License Exception ENC requirements.* In § 740.17 (Encryption Commodities and Software (ENC)), existing provisions are restructured for clarity, and new paragraph headings are added. Subject to the terms and conditions set forth therein, License Exception ENC applies to encryption items that do not qualify for ''mass market'' treatment.

a. § 740.17(a) (Exports and reexports to countries listed in Supplement 3 to part 740) is revised to allow the export and reexport of equipment controlled under ECCN 5B002 to the European Union plus eight additional countries, under License Exception ENC. Now, all items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002, except cryptanalytic items to government end-users, are eligible under this provision of the EAR. This includes items that provide an open cryptographic interface (OCI).

b. § 740.17(b)(1) (Encryption items for U.S. subsidiaries) is revised to allow equipment controlled under ECCN 5B002 to U.S. companies and their subsidiaries under License Exception ENC. All items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002, including those which provide an OCI, are eligible under this provision without review or notification.

c. § 740.17(b)(2) (Encryption commodities and software to non-government end-users) is revised for

clarity. All items controlled under ECCNs 5A002, 5B002 and 5D002, except items that provide an OCI, may be exported to non-government end-users 30 days after BIS receives a completed review request. This includes network infrastructure products, encryption source code (immediately eligible once the review request, including a copy of the source code, is submitted), general purpose toolkits, cryptanalytic items, and other items that do not qualify for ''mass market'' or ''retail'' treatment. This amendment also clarifies that the EAR imposes no additional restrictions on Internet and telecommunications service providers. Exports and reexports of network infrastructure commodities, software and technology to government end-users outside the countries listed in Supplement No. 3 to part 740 continue to require a license.

d. § 740.17(b)(3) (Retail encryption commodities, software and components to government and non-government end-users) is revised and restructured for clarity. New paragraph headers are added, and existing provisions are consolidated. This paragraph clarifies that the following are among the examples of encryption products eligible for retail treatment under License Exception ENC:

i. Encryption commodities and software (including key management products) with key lengths not exceeding 64 bits for symmetric algorithms, 1024 bits for asymmetric algorithms, and 160 bits for elliptic curve algorithms (see § 740.17(b)(3)(ii)(A));

ii. Encryption commodities and software which are limited to allowing foreign-developed encryption products to operate with U.S. products, or which activate encryption functions in other retail products (when the encryption would otherwise remain inoperable, ''dormant'' or disabled) (see §§ 740.17(b)(3)(ii)(C)–(D));

iii. Low-end virtual private networking (VPN) equipment (e.g. with encrypted throughput not exceeding 10 Mbps, or supporting no more than 100 concurrent encrypted tunnels) (see § 740.17(b)(3)(iii)(C));

iv. Applets and web portal software implementing Secure Socket Layer (SSL) encryption (see § 740.17(b)(3)(iii)(F));

v. Network and security management products designed for, bundled with, or pre-loaded on single CPU computers, low-end servers or retail networking products (see § 740.17(b)(3)(iii)(G)); and

vi. Short-range wireless components and software (e.g. with an operating range typically not exceeding 100 meters) based on commercial standards as Bluetooth, Home Radio Frequency (HomeRF) and IEEE 802.11b (''WiFi'') (see § 740.17(b)(3)(iii)(H));

e. In § 740.17(b)(4), previous provisions regarding commercial encryption source code are now subsumed by updated provisions for:

i. Encryption source code (and corresponding object code) which would be considered publicly available (refer to § 740.13(e) of the EAR); and

ii. Encryption source code which would not be considered publicly available (i.e., ''company proprietary'' encryption source code). See § 740.17(b)(2)(ii).

This paragraph (b)(4) now cross-references the *de minimis* provisions of § 734.4 for encryption items controlled under ECCNs 5A002 and 5D002.

f. Previous references to cryptographic interfaces in former § 740.17(b)(5) are now incorporated into the general provisions of License Exception ENC. See § 740.17(a) for cryptographic interface items to the European Union plus eight additional countries, and refer to § 740.17(b)(1) for U.S. subsidiaries. Products which are used to establish a closed cryptographic interface (e.g. signing) continue to be treated as ''retail'' (see § 740.17(b)(3)(ii)(C)).

g. In § 740.17(c) (Reexports and transfers), this rule clarifies that foreign-developed products which are designed to operate with U.S. products through a cryptographic interface are subject to the EAR, but do not require review by BIS.

h. In § 740.17(d) (Review requirement), instructions and procedures for submitting review requests for encryption items under License Exception ENC are updated and clarified.

i. In §§ 740.17(d)(2) and (3)(i), existing grandfathering and key length increase provisions are revised, for clarity and consistency with §§ 740.17(a), (b)(2) and (b)(3).

j. § 740.17(e) (Reporting requirements) is restructured for clarity. This rule clarifies that the requirements to report foreign products developed from U.S. source code and toolkits apply only if you know when the foreign product is made available for commercial sale. See § 740.17(e)(3). The previous reporting exemption for ''finance-specific products'' is removed from this section, to clarify that these products may be exported and reexported (except to embargoed or designated terrorist supporting countries and sanctioned persons) under ECCNs 5A992 and 5D992, without review by BIS. Refer to § 742.15(b)(3)(iii). This clarification is made for consistency with the Wassenaar Arrangement list of dual-use items. Reporting exemptions previously listed in under § 740.17(e)(1) are now listed under § 740.17(e)(4).

5. *Clarification of licensing requirements and policies for encryption items.* In § 742.15(a) (Licensing requirements and policy), existing U.S. licensing requirements and licensing policy provisions, including those pertaining to encryption items under Encryption Licensing Arrangements, are consolidated into clarified provisions § 742.15(a)(1)(i) (Licensing requirements) and § 742.15(a)(1)(ii) (Licensing policy).

6. *Clarification of notification and review requirements for encryption items controlled under ECCN 5A992, 5D992, or 5E992.* § 742.15(b) (Notification and review requirements for encryption items controlled under ECCNs 5A992, 5D992 and 5E992) clarifies when notification or review is required for encryption items not controlled for ''EI'' and ''NS'' reasons under ECCNs 5A002, 5D002 or 5E002.

i. In § 742.15(b)(1), notification requirements for certain encryption items with restricted bit lengths are clarified.

ii. In § 742.15(b)(2), review requirements for >64 bit mass market encryption products are established.

iii. In § 742.15(b)(3), transactions and items which do not require review or notification are described.

iv. § 742.15(b)(4) clarifies that commodities, software and components which activate encryption functions in 56-bit or mass-market products (when the encryption would otherwise remain inoperable, ''dormant'' or disabled), are also controlled under ECCNs 5A992 and 5D992. Commodities and software that ''activate'' dormant 56-bit encryption require notification under § 742.15(b)(1), while commodities and software that ''enable'' mass market products to perform encryption exceeding 64 bits for the symmetric algorithm require review under § 742.15(b)(2).

Note: ''Activation'' commodities and software that enable ''EI'' controlled encryption functionality (e.g. 128-bit encryption of network infrastructure data communications) are controlled under ECCNs 5A002 and 5D002, and require review under License Exception ENC. Refer to § 740.17 of the EAR. Note that, once an encryption item is activated with ''EI'' controlled encryption functionality, the item is controlled under ECCN 5A002 (if hardware) or 5D002 (if software) and may no longer be exported No License Required under ECCNs 5A992 or 5D992.

v. In § 742.15(b)(5), an illustrative, but by no means exhaustive, list of mass market encryption products is provided.

7. *Clarification of documentation requirements for submitting review requests for encryption items.* In Supplement No. 6 to part 742 (Guidelines for Submitting Support Documentation Required for Review Requests for Encryption Items), instructions to exporters are updated and clarified. Exporters are instructed to insert the appropriate phrase ''Mass market encryption'' or ''License Exception ENC'' in Block 9 (''Special Purpose'') of the review request. (For compatibility with current application processing systems, exporters should continue to place an ''X'' in the box marked ''Classification Request'' in Block 5: ''Type of Application'.) Support documentation described in this Supplement is required for the review of encryption items.

8. *Clarification to distinguish encryption review requests from classification requests.* In § 748.3 (Classification Requests, Review Requests and Advisory Opinions), existing paragraph (b)(3) is removed and replaced with a new paragraph (d) (''Review requests for encryption items''), to clarify that the process for reviewing encryption items by BIS, in conjunction with the ENC Encryption Request Coordinator, obviates the need for separate classification by BIS.

9. *Definition of ''cryptanalytic items'' clarified.* In § 772.1 (Definition of Terms), the definition of ''cryptanalytic items'' is updated to incorporate the previous EAR definition of ''cryptanalytic functions''. A technical note is also added to clarify that ''cryptanalytic items'' does not include software designed and limited to protect against malicious computer damage or unauthorized system intrusion (e.g., viruses, worms and trojan horses). Such software is controlled under ECCN 5D992.c.

10. *Revisions to the Cryptography Note and to the explanatory notes in ECCN 5D002.* In Supplement No. 1 to part 774 (the Commerce Control List), the previous 64 bit restriction to the Cryptography Note (Note 3) to Category 5—part II is removed, consistent with the Wassenaar Arrangement list of dual-use items. Explanatory notes to ECCN 5D002 ''Information Security—Software'' are updated, for consistency with the other revised sections of this amendment.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any 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. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0088, ''Multi-Purpose Application,'' and 0694–0104, ''Commercial Encryption Items Transferred from the Department of State to the Department of Commerce.'' Collection 0694–0088 carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. For collection 0694–0104, it is estimated that companies will take 5 minutes to complete notifications for source code under License Exception TSU. It will take companies 15 minutes to complete upgrade notifications. For reporting under License Exception ENC and licenses for encryption items, it will take companies 8 hours to complete semi-annual reporting requirements. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in interim final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects

15 CFR Parts 732, 740, and 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 734 and 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 742, 770, and 772

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, Parts 732, 734, 738, 740, 742, 748, 770, 772, and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

1a. The authority citation for 15 CFR Parts 740 and 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

2. The authority citation for 15 CFR Part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

3. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

4. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

5. The authority citation for 15 CFR Part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, August 22, 2001.

5a. The authority citation for 15 CFR Part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, August 22, 2001.

6. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287(c); 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466(c); 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

PART 732—[AMENDED]

7. Section 732.2 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 732.2 Steps regarding scope of the EAR.

* * * * *

(d) *Step 4: Foreign-made items incorporating less than the de minimis level of U.S. parts, components, and materials.* This step is appropriate only for items that are made outside the United States and not currently in the United States. Note that the following encryption items are subject to the EAR even if they incorporate less than the de minimis level of U.S. content: encryption items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) and mass market encryption commodities and software, described in the Cryptography Note (Note 3) in Category 5—Part 2 (''Information Security'') of the Commerce Control List, that have not been reviewed by BIS and released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002 in accordance with the requirements described in § 742.15(b)(2) of the EAR. Exporters may, as part of a review request, ask that certain 5A002 and 5D002 parts, components and software also be made eligible for *de minimis* treatment (see § 734.4(b) of the EAR). The review of *de minimis* eligibility will take into account U.S. national security interests.

* * * * *

8. Section 732.3 is amended by revising paragraph (e)(2) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(e) * * *

(2) *Guidance for calculations.* For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note that under certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de minimis* provisions of the EAR. In addition, the *de minimis* exclusions from the parts and components rule do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in General Prohibition Seven (U.S. Person Proliferation Activity) described in § 736.2(b)(7) of the EAR. Note that foreign-made items that incorporate U.S.-origin items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No.1 to Part 774 of the EAR) are subject to the EAR even if they incorporate less than the *de minimis* level of U.S. content. However, exporters may, as part of a review request, ask that certain 5A002 and 5D002 parts, components and software also be made eligible for *de minimis* treatment (see § 734.4(b) of the EAR).

* * * * *

PART 734—[AMENDED]

9. Section 734.2 is amended by revising paragraph (b)(9)(ii) and the introductory text of paragraph (b)(9)(iii) to read as follows:

§ 734.2 Important EAR terms and principles.

* * * * *

(b) * * *

(9) * * *

(i) * * *

(ii) The export of encryption source code and object code software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S., or making such software available for transfer outside the United States, over wire, cable, radio, electro-magnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States, including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code. See §740.13(e) of the EAR for notification requirements for exports or reexports of encryption source code and object code software considered to be publicly available consistent with the provisions of § 734.3(b)(3) of the EAR.

(iii) Subject to the General Prohibitions described in part 736 of the EAR, such precautions for Internet transfers of products eligible for export under § 740.17 (b)(2) of the EAR (encryption software products, certain encryption source code and general purpose encryption toolkits) shall include such measures as:

* * * * *

10. Section 734.3 is amended by revising paragraph (b)(3) introductory text to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(b) * * *

(3) Publicly available technology and software, except software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List and mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992, that:

* * * * *

11. Section 734.4 is amended by revising paragraph (b) to read as follows:

§ 734.4 De minimis U.S. content.

* * * * *

(b) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). However, exporters may, as part of an encryption review request, ask that software controlled under ECCN 5D002 and eligible for export under the ''retail'' or ''source code'' provisions of license exception ENC, and parts and components controlled under ECCN 5A002, be made eligible for *de minimis*

treatment. The review of *de minimis* eligibility will take U.S. national security interests into account. Certain encryption items controlled under ECCNs 5A992, 5D992 and 5E992 are not eligible for *de minimis* treatment, unless exporters have complied with the applicable notification or review requirements described in § 742.15(b)(1) and (b)(2) of the EAR. Encryption items controlled by ECCN 5A992, 5D992 or 5E992 and described in § 742.15(b)(3) of the EAR are not subject to these notification or review requirements.

* * * * *

12. Section 734.7 is amended by revising paragraph (c) to read as follows:

§ 734.7 Published information and software.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, note that encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List and mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992 remain subject to the EAR. *See* § 740.13(e) of the EAR for certain exports and reexports under license exception.

13. Section 734.8 is amended by revising paragraph (a) to read as follows:

§ 734.8 Information resulting from fundamental research.

(a) *Fundamental research.* Paragraphs (b) through (d) of this section and § 734.11 of this part provide specific rules that will be used to determine whether research in particular institutional contexts qualifies as ''fundamental research''. The intent behind these rules is to identify as ''fundamental research'' basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in § 734.11(b) of this part. (See Supplement No. 1 to this part, Question D(8)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) or to mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992. *See* § 740.13(e) of the EAR for certain exports and reexports under license exception.

* * * * *

14. Section 734.9 is revised to read as follows:

§ 734.9 Educational Information.

''Educational information'' referred to in § 734.3(b)(3)(iii) of this part is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is discussed in § 734.8(b) of this part. (Refer to Supplement No. 1 to this part, Question C(1) through C(6)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992. *See* § 740.13(e) of the EAR for certain exports and reexports under license exception.

15. Section 738.4 is amended by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 738.4 Determining whether a license is required.

(a) * * *

(2) * * *

(ii) * * *

(B) If no, a license is not required based on the particular Reason for Control and destination. Provided that General Prohibitions Four through Ten do not apply to your proposed transaction and that any applicable notification or review requirements described in § 742.15(b)(1) and (b)(2) of the EAR have been met for certain encryption items controlled under ECCNs 5A992, 5D992 and 5E992, you may effect your shipment using the symbol ''NLR''. Proceed to parts 758 and 762 of the EAR for information on export clearance procedures and recordkeeping requirements. Note that although you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control is required to determine the most advantageous License Exception available for your particular transaction and, if a license is required, ascertain the scope of review conducted by BIS on your license application.

* * * * *

PART 740—[AMENDED]

16. Section 740.9 is amended by revising paragraph (c) to read as follows:

§ 740.9 Temporary imports, exports and reexports (TMP).

* * * * *

(c) *Exports of beta test software.* (1) *Scope.* The provisions of this paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* Encryption software controlled under ECCN 5D002 is not eligible for export or reexport to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, Iraq, Libya, and Sudan under the provisions of this paragraph (c).

(3) *Eligible software.* All software that is controlled by the Commerce Control List (Supplement No.1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph (c). Encryption software controlled for ''EI'' reasons under ECCN 5D002 is eligible for export and reexport under this paragraph (c), provided that the exporter has submitted the information described in paragraph (c)(8) of this section by the time of export. Final encryption products produced by the testing consignee are subject to any applicable provisions in § 742.15(b)(2) of the EAR (for mass market encryption commodities and software with symmetric key length exceeding 64-bits) or § 740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) *Conditions for use.* Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see Supplement 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (''Information Security'') of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without

further substantial support from the supplier.

(5) *Importer Statement.* Prior to exporting or reexporting any eligible software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

''We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.''

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any beta test software that was exported or reexported to them under the provisions of this paragraph (c).

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) *Notification and reporting of beta test encryption software.* (i) *Notification.* For beta test encryption software eligible under this license exception, you must submit to BIS, by the time of export, the information described in paragraphs (a) through (e) of Supplement 6 to part 742 of the EAR. Submit your notification by email to BIS at crypt@bis.doc.gov, and provide a copy of the notification to the ENC Encryption Request Coordinator at enc@ncsc.mil.

(ii) *Reporting.* For beta test encryption software eligible under this license exception, the exporter must submit the names and addresses of the testing consignees (except names and addresses of individual consumers) and the name and version of the beta software consistent with § 740.17(e)(5) of the EAR.

17. Section 740.13 is amended by revising the introductory text, by revising paragraphs (d)(1) and (d)(2), and by revising paragraph (e) to read as follows:

§ 740.13 Technology and software—unrestricted (TSU).

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); ''mass market'' software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

* * * * *

(d) *General Software Note: ''mass market'' software. (1) Scope.* The provisions of paragraph (d) authorize exports and reexports of ''mass market'' software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).[1]

(2) *Exclusions.* The provisions of this paragraph (d) are not available for encryption software controlled for ''EI'' reasons under ECCN 5D002 or for encryption software with symmetric key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from ''EI'' and ''NS'' controls pursuant to § 742.15(b)(2) of the EAR, it is controlled under ECCN 5D992 and is thus outside the scope of License Exception TSU.) *See* § 742.15(b)(2) of the EAR for exports and reexports of mass market encryption products controlled under ECCN 5D992.

* * * * *

(e) *Encryption source code (and corresponding object code).* (1) *Scope.* The provisions of paragraph (e) of this section authorize exports and reexports, without review, of encryption source code controlled under ECCN 5D002 that would be considered publicly available under § 734.3(b)(3) of the EAR, and corresponding object code resulting from the compiling of such source code.

(2) *Eligible Software.* Encryption source code is eligible for export and reexport under License Exception TSU, provided that it would be considered publicly available under § 734.3(b)(3) of the EAR. Such encryption source code is eligible for License Exception TSU even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code. Corresponding object code resulting from the compiling of such source code is also eligible for License Exception TSU treatment if such object code would also be considered publicly available under § 734.3(b)(3) of the EAR.

(3) *Restrictions.* Encryption software controlled under ECCN 5D002 that would not be considered publicly available, but which incorporates or is specially designed to use encryption software that would be considered publicly available, is not eligible for export or reexport under this paragraph (e).

(4) *Country restrictions.* You may not knowingly export or reexport source code, corresponding object code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(5) *Notification requirement.* You must provide BIS written notification of the Internet location (e.g., URL or Internet address) of the source code or a copy of the source code by the time of export. Submit the notification by email to BIS at crypt@bis.doc.gov, and provide a copy of the notification to the ENC Encryption Request Coordinator at enc@ncsc.mil.

(6) *''Knowledge'' of a prohibited export or reexport.* Posting of source code or corresponding object code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone would not establish ''knowledge'' of a prohibited export or reexport. *See* § 740.13(e)(4) of the EAR for prohibited knowing exports to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. In addition, such posting would not trigger ''red flags'' necessitating the affirmative duty to inquire under the ''Know Your Customer'' guidance provided in Supplement No. 3 to part 732 of the EAR.

18. Section 740.17 is revised to read as follows:

§ 740.17 Encryption commodities and software (ENC).

License Exception ENC authorizes the export and reexport of encryption items controlled under ECCN 5A002, 5D002 or 5E002, and ''information security'' test, inspection, and production equipment controlled under ECCN 5B002. Encryption items exported and reexported under License Exception ENC remain subject to ''EI'' controls. No encryption items may be exported or

[1] ''Mass market'' software may fall under the classification of ''general use'' software for export clearance purposes. Exporters should consult the Census Bureau FTSR for possible SED requirements.

reexported, under this license exception, to countries listed in Country Group E:1 of Supplement No. 1 to this Part—this includes exports and reexports (as defined in § 734.2 of the EAR) of encryption source code and technology to nationals of these countries. Review and reporting requirements apply to certain exports under this license exception (paragraph (d) of this section describes how to submit encryption items for review; paragraph (e) of this section describes which exports are subject to reporting requirements). Certain exports and reexports to government end-users are authorized under paragraphs (a) and (b)(3) of this section. Section 772.1 of the EAR defines the term ''government end-user'' as it applies to encryption items. Section 742.15 of the EAR describes the license requirements and policies that apply to exports and reexports of encryption items.

(a) *Exports and reexports to countries listed in Supplement 3 to this part.* Encryption items controlled under ECCN 5A002, 5D002 or 5E002 (except cryptanalytic items as defined in Part 772 of the EAR), and ''information security'' test, inspection, and production equipment controlled under ECCN 5B002, are authorized for immediate export and reexport to government and non-government end-users located in the countries listed in Supplement 3 to this part 740, subject to the review requirements described in paragraph (d) of this section. Cryptanalytic items are authorized to non-government end-users, only, under this paragraph (a). Encryption items and ''information security'' test, inspection, and production equipment may also be exported or reexported to any destination eligible under this license exception for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement 3 to this part 740. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this part.) Before you export an item for the first time under this license exception, you must submit to BIS and the ENC Encryption Request Coordinator a review request for that item, as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements.

(b) *Exports and reexports to all other eligible countries.* (1) *Encryption items for U.S. subsidiaries.* Exports and reexports of encryption items controlled under ECCN 5A002, 5D002 or 5E002 and ''information security'' test, inspection, and production equipment controlled under ECCN 5B002, are authorized under this license exception, without review, to foreign subsidiaries of U.S. companies for any end-use not prohibited elsewhere in the EAR. This paragraph (b)(1) also authorizes exports and reexports by U.S. companies and their subsidiaries of any such items (including encryption source code and technology), to foreign nationals working as contractors, interns or employees of said U.S. companies and their subsidiaries, provided that the items are for internal company use, including the development of new products. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this part). All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph (b)(1) are subject to the EAR and require review and authorization before any sale or retransfer outside of the U.S. company.

(2) *Encryption commodities and software to non-government end-users.* Thirty days after registration of a completed review request by BIS (''registration'' is defined in § 750.4(a)(2) of the EAR), encryption commodities, software and components controlled under ECCN 5A002 or 5D002 (except such items which provide an open cryptographic interface, as defined in part 772 of the EAR), and ''information security'' test, inspection, or production equipment controlled under ECCN 5B002, are authorized for export or reexport to any individual, commercial firm or other non-government end-user located outside the countries listed in Supplement 3 to this part 740. The thirty days may not include any time that your review request was on hold without action. To request authorization under the provisions of this paragraph (b)(2), you must submit to BIS and the ENC Encryption Request Coordinator a review request as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements. Encryption commodities and software eligible for export or reexport under this paragraph (b)(2) include, but are not limited to, the following:

(i) Network infrastructure products, such as high end routers or switches designed for large volume communications, and specially designed software, parts, and components thereof (including commodities and software which activate or enable cryptographic functionality in network infrastructure products that would otherwise remain disabled);

(ii) Encryption source code that would not be considered publicly available for export or reexport under License Exception TSU. (You may immediately export and reexport such encryption source code under License Exception ENC, provided that you have submitted a review request, including a copy of your source code, to BIS and the ENC Encryption Request Coordinator. Note that License Exception ENC prohibits exports and reexports of encryption source code to countries listed in Country Group E:1 of Supplement No. 1 to this part, or to nationals of these countries.);

(iii) General purpose toolkits;

(iv) Cryptanalytic items (as defined in part 772 of the EAR);

(v) Commodities, software and components not otherwise authorized for export as mass market or retail.

(3) *Retail encryption commodities, software and components to government and non-government end-users.* Thirty days after registration of a completed review request by BIS (''registration'' is defined in § 750.4(a)(2) of the EAR), retail encryption commodities, software and components controlled under ECCN 5A002 or 5D002 are authorized for export and reexport to any individual, commercial firm or other non-government end-user located outside the countries listed in Supplement 3 to this part 740. The thirty days may not include any time that your review request was on hold without action. Once BIS has completed its review and authorizes your encryption commodities, software, and components for export or reexport as retail encryption items under License Exception ENC, you may also export or reexport these items to government end-users. To request authorization under the provisions of this paragraph (b)(3), you must submit to BIS and the ENC Encryption Request Coordinator a review request as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements.

(i) *Retail eligibility criteria.* Retail encryption commodities and software are products and components:

(A) Generally available to the public by means of any of the following:

(*1*) Are sold in tangible form through retail outlets independent of the manufacturer;

(*2*) Are specially designed for individual consumer use; or

(*3*) Are sold or will be sold in large volume, without restriction, through mail order transactions, electronic transactions, or telephone call transactions; and

(B) Meeting all of the following:

(*1*) The cryptographic functionality cannot be easily changed by the user;

(*2*) Substantial support is not required for installation and use; and

(*3*) The cryptographic functionality has not been modified or customized to customer specification.

(ii) *Additional types of retail encryption products.* The following products will also be considered to be retail encryption products:

(A) Encryption commodities and software (including key management products) with key lengths not exceeding 64 bits for symmetric algorithms, 1024 bits for asymmetric key exchange algorithms, and 160 bits for elliptic curve algorithms. (You may immediately export or reexport such encryption commodities and software as retail items upon submitting a completed review request to BIS and the ENC Encryption Request Coordinator, in accordance with the requirements described in paragraph (d) of this section);

(B) Encryption products and network-based applications that provide equivalent functionality to other mass market or retail encryption commodities and software (refer to the Cryptography Note (Note 3) to part II of Category 5 of the CCL for the definition of mass market encryption commodities and software);

(C) Encryption products that are limited to allowing foreign-developed cryptographic products to operate with U.S. products (e.g. signing). No review of the foreign-developed cryptography is required;

(D) Encryption commodities and software that activate or enable cryptographic functionality in retail encryption products which would otherwise remain disabled.

(iii) *Examples of eligible retail encryption products:* Subject to the retail eligibility criteria in paragraph (b)(3)(i) of this section, retail encryption items include, but are not limited to, the following:

(A) General purpose operating systems that do not qualify as mass market;

(B) Non-programmable encryption chips, and chips that are constrained by design for retail products;

(C) Retail networking products, such as low-end routers, firewalls, and virtual private networking (VPN) equipment designed for small office or home use;

(D) Desktop applications (e.g. e-mail, browsers, games, word processing, database, financial applications or utilities) that do not qualify as mass market;

(E) Programmable database management systems and associated application servers;

(F) Low-end servers and application-specific servers (including client-server applications, e.g. Secure Socket Layer (SSL)-based web applications and applets, servers, and portals);

(G) Network and security management products designed for, bundled with, or pre-loaded on single CPU computers, low-end servers or retail networking products; and

(H) Short-range wireless components and software that do not qualify as mass market. Products that would be controlled under ECCN 5A002 or 5D002, only because they incorporate components or software which provide short-range wireless encryption functions, may be exported or reexported under the retail provisions of License Exception ENC, without review or reporting.

(4) *Reviews for de minimis eligibility:* Items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 are not eligible for *de minimis* treatment under § 734.4 of the EAR. However, exporters may, as part of a review request, ask that U.S.-origin retail encryption software controlled under ECCN 5D002 and U.S.-origin parts and components controlled under ECCN 5A002, that are incorporated in foreign-made items, be made eligible for *de minimis* treatment. The review of *de minimis* eligibility for such items will take U.S. national security interests into account.

(c) *Reexports and transfers.* U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b) of this section to government end-users, or for government end-uses, within the same country are prohibited, unless otherwise authorized by license or license exception. Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits remain subject to the EAR, but do not require review (for encryption reasons) by BIS. These products can be exported or reexported under License Exception ENC without notification and without further authorization (for encryption reasons) from BIS. Such products include foreign-developed products that are designed to operate with U.S. products through a cryptographic interface.

(d) *Review requirement.* (1) *Review request procedures.* To request review of your encryption products under License Exception ENC, you must submit to BIS and to the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement 6 to part 742 of the EAR (Guidelines for Submitting Review Requests for Encryption Items). Review requests must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, as described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''License Exception ENC'' in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Review requests that are not submitted electronically to BIS should be mailed to the address indicated in § 748.2(c) of the EAR. See paragraph (e)(5)(ii) of this section for the mailing address for the ENC Encryption Request Coordinator. BIS will notify you if there are any questions concerning your request for review under License Exception ENC (e.g., because of missing or incomplete support documentation). Once your review has been completed, BIS will notify you in writing concerning the eligibility of your products for export or reexport, under the provisions of this license exception. BIS reserves the right to suspend your eligibility to export and reexport under License Exception ENC and to return your review request without action, if you have not met the review requirements. You may not export or reexport retail encryption commodities, software and components under this license exception to government end-users headquartered outside of Canada and the countries listed in Supplement 3 to this part 740, unless you have received prior authorization from BIS.

(2) *Grandfathering.* Encryption commodities, software, parts or components (except cryptanalytic items) previously approved for export may be exported or reexported without further review to government and non-government end-users in countries listed in Supplement 3 to this part 740, and to any non-government end-user outside the countries listed in

Supplement 3 to this part 740 (except items which provide an open cryptographic interface as defined in part 772 of the EAR). This includes products approved under a license, an Encryption Licensing Arrangement, or classified as eligible to use License Exception ENC (except for those products that were authorized only for export to U.S. subsidiaries) prior to October 19, 2000. Encryption technology previously approved for export under a license or an Encryption Licensing Arrangement may be exported or reexported to government and non-government end-users in countries listed in Supplement 3 to this part 740.

(3) *Key length increases.* Exporters may increase the key lengths of products previously classified and continue to export these products under the applicable provisions of License Exception ENC, without further review, upon certification to BIS and the ENC Encryption Request Coordinator in accordance with paragraph (d)(3)(ii) of this section. No other change in cryptographic functionality is allowed under License Exception ENC.

(i) Any product previously classified as ECCN 5A002 or 5D002 (except encryption items that provide an open cryptographic interface, as defined in § 772.1 of the EAR) may, with any upgrade to the key length used for confidentiality or key exchange algorithms, be exported or reexported under License Exception ENC to any non-government end-user without an additional review. A license is required to export or reexport items that provide an open cryptographic interface to end-users located outside the countries listed in Supplement 3 to this part 740. In addition, products previously reviewed by BIS that were determined to be eligible as ''retail'' under this license exception may be exported or reexported to government end-users, without additional review. For products not previously determined to be eligible as retail products, another review is required to determine their eligibility as ''retail'' products under paragraph (b)(3) of this section.

(ii) Exporters must certify to BIS, in a letter from a corporate official, that the only change to the encryption product is the key length for confidentiality or key exchange algorithms and that there is no other change in cryptographic functionality. Certifications must include the original authorization number issued by BIS and the date of issuance. BIS must receive this certification prior to any export of an upgraded encryption product. The certification should be sent to BIS and a copy of the certification should be sent to the ENC Encryption Request Coordinator at the mailing address indicated in paragraph (e)(5) of this section.

(e) *Reporting requirements.* (1) *Semi-annual reporting requirement.* Semi-annual reporting is required for exports and reexports under this license exception. Certain encryption items and transactions are excluded from this reporting requirement (see paragraph (e)(4) of this section). For instructions on how to submit your reports, see paragraph (e)(5) of this section.

(2) *General information required.* Exporters must include all of the following applicable information in their reports:

(i) For items exported to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported and, if collected by the exporter as part of the distribution process, the end-user's name and address;

(ii) For items exported through direct sale, the name and address of the recipient, the item, and the quantity exported (except for retail products, if the end-user is an individual consumer);

(iii) For exports of ECCN 5E002 items to be used for technical assistance that are not released by § 744.9 of the EAR, the name and address of the end-user; and

(iv) The authorization number and the name of the item(s) exported.

(3) *Information on foreign manufacturers and products that use encryption items.* For direct sales or transfers, under License Exception ENC, of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that provide an open cryptographic interface to foreign developers or manufacturers when intended for use in foreign products developed for commercial sale, you must submit the names and addresses of the manufacturers using these encryption items and, if you know when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (e.g., brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(4) *Exclusions from reporting requirements.* Reporting is not required for the following items and transactions:

(i) Any encryption item to U.S. subsidiaries for internal company use;

(ii) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(iii) Retail products exported to individual consumers;

(iv) Encryption items exported via free or anonymous download;

(v) Encryption items from or to a U.S. bank, financial institution or their subsidiaries, affiliates, customers or contractors for banking or financial operations;

(vi) Items that incorporate components limited to providing short-range wireless encryption functions;

(vii) Retail operating systems, or desktop applications (e.g. e-mail, browsers, games, word processing, data base, financial applications or utilities) designed for, bundled with, or pre-loaded on single CPU computers, laptops or hand-held devices;

(viii) Client Internet appliance and client wireless LAN cards;

(ix) Foreign products developed by bundling or compiling of source code.

(5) *Submission requirements.* You must submit the reports required under this section, semi-annually, to BIS, unless otherwise provided in this paragraph (e)(5). For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form to BIS. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at crypt@bis.doc.gov (with a copy to the ENC Encryption Request Coordinator at enc@ncsc.mil), or disks and CDs containing the reports may be mailed to the following addresses:

(i) Department of Commerce, Bureau of Industry and Security, Office of Strategic Trade and Foreign Policy Controls, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: Encryption Reports.

(ii) A copy of the report should be sent to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Ft. Meade, MD 20755–6000.

PART 742—[AMENDED]

19. Section 742.15 is revised to read as follows:

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm U.S. national security, foreign policy and law enforcement interests. The United States has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the United States has a responsibility to maintain control over the export and reexport of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, exports and reexports of encryption software, like exports and reexports of encryption hardware, are controlled because of this functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export or reexport may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *Licensing requirements and policy*—(1) *Encryption items controlled under ECCN 5A002, 5D002, or 5E002.* (i) *Licensing requirements.* A license is required to export or reexport encryption items (''EI'') controlled under ECCN 5A002, 5D002 or 5E002 to all destinations, except Canada. Refer to part 740 of the EAR, for license exceptions that apply to certain encryption items, and to § 772.1 of the EAR for definitions of encryption items and terms. Exporters must submit applications to obtain authorization under a license or an Encryption Licensing Arrangement for exports and reexports of encryption items that are not eligible for a license exception.

(ii) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. Exports of encryption items to governments, or Internet and telecommunications service providers for the provision of services specific to governments, may be favorably considered for civil uses, e.g., social or financial services to the public; civil justice; social insurance, pensions and retirement; taxes and communications between governments and their citizens. Encryption Licensing Arrangements may be authorized for exports and reexports of unlimited quantities of encryption items to all destinations, except countries listed in Country Group E:1 of Supplement No. 1 to part 740. Encryption Licensing Arrangements, including those which authorize exports and reexports of encryption technology to strategic partners (as defined in § 772.1 of the EAR) of U.S. companies, are valid for four years and may require reporting. Applicants seeking authorization for Encryption Licensing Arrangements must specify the sales territory and class of end-user on their license applications.

(2) *Encryption items controlled under ECCN 5A992, 5D992, or 5E992.* (i) *Licensing requirements.* Items controlled under ECCN 5A992, 5D992 or 5E992 are controlled for anti-terrorism (AT) reasons to countries listed in AT column 1 or AT column 2, as applicable, of the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license also may be required to certain destinations or persons for other reasons specified elsewhere in the EAR (e.g., embargoes). In addition, these encryption items are subject to the notification or review requirements described in paragraph (b)(1) and (b)(2) of this section, unless specifically excluded by paragraph (b)(3) of this section.

(ii) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. BIS does not authorize Encryption Licensing Arrangements for exports and reexports of encryption items to any of the countries listed in Country Group E:1 of Supplement No. 1 to Part 740 of the EAR.

(b) *Notification and review requirements for encryption items controlled under ECCN 5A992, 5D992 or 5E992.* You may export and reexport encryption commodities, software and technology controlled under ECCN 5A992, 5D992 or 5E992 without a license (NLR: No License Required) to most destinations, in accordance with paragraph (a)(2) of this section, provided that you have met the notification and review requirements described in paragraphs (b)(1) and (b)(2) of this section. Certain encryption items controlled under ECCN 5A992, 5D992 or 5E992 may be exported or reexported without notification or review—these items are identified in paragraph (b)(3) of this section. In addition, no post-shipment reporting is required for encryption items controlled under ECCN 5A992, 5D992, or 5E992. See § 732.5 of the EAR for Shipper's Export Declaration (SED), Destination Control Statements (DCS), and recordkeeping requirements for items exported and reexported without a license (NLR).

(1) *Notification requirement for specified encryption items.* You may export and reexport encryption items controlled under ECCN 5A992, 5D992 or 5E992 and identified in this paragraph (b)(1) to most destinations without a license (NLR: No License Required), provided that you have submitted to BIS, by the time of export, the information described in paragraphs (a) through (e) of Supplement 6 to this part 742, and if applicable, specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). Submit this notification to BIS by email, to crypt@bis.doc.gov, and also send a copy to the ENC Encryption Request Coordinator, at enc@ncsc.mil. If you are unsure as to whether your encryption items are eligible for export or reexport under this paragraph (b)(1), you should submit a request, to BIS and to the ENC Encryption Request Coordinator, for a review of your encryption items pursuant to the requirements of paragraph (b)(2) of this section (for mass market encryption commodities and software), or under the provisions of License Exception ENC (see § 740.17 of the EAR). The following encryption items controlled by ECCN 5A992, 5D992, or 5E992 are eligible for export or reexport without a license, to most destinations, with notification only:

(i) Up to (and including) 64-bit mass market encryption commodities and software;

(ii) Encryption items (including key management products and company proprietary implementations) with key lengths not exceeding 56 bits for symmetric algorithms, 512 bits for asymmetric key exchange algorithms, and 112 bits for elliptic curve algorithms;

(2) *Review requirement for mass market encryption commodities and software exceeding 64 bits:* Mass market encryption commodities and software employing a key length greater than 64 bits for the symmetric algorithm (including such products previously reviewed by BIS and exported under ECCN 5A002 or 5D002) remain subject to the EAR and require review by BIS, prior to export or reexport under this paragraph (b)(2). Encryption commodities and software that are not eligible as retail items under License Exception ENC do not qualify for mass

market treatment (see § 740.17(b)(3) of the EAR for retail product eligibility under License Exception ENC.)

(i) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 (''Information Security''), of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). Review requests must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, as described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Review requests that are not submitted electronically to BIS should be mailed to the address indicated in § 748.2(c) of the EAR. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(5)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (e.g., because of missing or incomplete support documentation).

(ii) *Action by BIS.* Once BIS has completed its review, you will receive written confirmation concerning the eligibility of your items for export or reexport as mass market encryption commodities or software controlled under ECCN 5A992 or 5D992. If, during the course of its review, BIS determines that your encryption items do not qualify for mass market treatment under the EAR, or are otherwise controlled under ECCN 5A002, 5B002, 5D002 or 5E002, BIS will notify you and will review your commodities or software for eligibility under License Exception ENC (see § 740.17 of the EAR for review and reporting requirements for encryption items under License Exception ENC). BIS reserves the right to suspend your eligibility to export and reexport under the provisions of this paragraph (b)(2) and to return review requests, without action, if the requirements for review have not been met.

(iii) *Exports and reexports to government and non-government end-users.* Immediately upon registration by BIS of your completed review request (''registration'' is defined in § 750.4(a)(2) of the EAR), you may export or reexport mass market encryption commodities and software exceeding 64 bits, under ECCNs 5A992 and 5D992, without a license (NLR: No License Required) to government and non-government end-users located in the countries listed in Supplement 3 to part 740 of the EAR. These mass market encryption products also may be exported or reexported, without a license (NLR), to most destinations (except those that require a license for AT reasons or for reasons described elsewhere in the EAR) for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement 3 to part 740 of the EAR. Thirty days after BIS registers your review request, you may export or reexport these mass market encryption products, without a license, to government and non-government end-users located in most destinations outside the countries listed in Supplement 3 to part 740 of the EAR (certain destinations and persons may require a license for AT reasons or for reasons specified elsewhere in the EAR), unless otherwise notified by BIS (e.g., because of missing or incomplete support documentation, or conversion to License Exception ENC review). The thirty days may not include any time that your review request was on hold without action. See § 772.1 of the EAR for the definition of ''government end-user'' as it applies to encryption items.

(3) *Exclusions from notification and review requirements.* The following items and transactions do not require notification or review prior to export or reexport. However, a license may be required to export or reexport these items to certain destinations for AT reasons or for reasons set forth elsewhere in the EAR (e.g., embargoes).

(i) *Encryption items for U.S. subsidiaries.* Encryption items controlled under ECCN 5A992, 5D992, or 5E992 that are exported to foreign subsidiaries of U.S. companies (as defined in § 772.1 of the EAR) for any end-use, including the development of new products, that is not prohibited elsewhere in the EAR. All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph are subject to the EAR and require review and authorization before any sale or retransfer outside of the U.S. company.

(ii) *Mass market short-range wireless products.* Mass market products that are controlled under ECCN 5A992 or 5D992 only because they incorporate components or software which provide short-range wireless encryption functions (e.g., wireless products with an operating range typically not exceeding 100 meters).

(iii) *Items with limited cryptographic functionality.* Encryption items controlled under ECCN 5A992, 5D992, or 5E992 for which the use of cryptography is limited to cryptographic functions that are not controlled for ''EI'' reasons under the EAR (e.g. items with cryptographic functions limited to authentication or digital signature, execution of copy protected software, and ''finance specific'' items specially designed and limited for banking use or money transactions). These items are described in the Related Controls paragraph and the Technical Notes under ECCN 5A002 on the Commerce Control List (Supplement No. 1 to part 774 of the EAR), which are cross-referenced under ECCNs 5D002 and 5E002.

(4) *Commodities and software that activate or enable cryptographic functionality.* Commodities, software, and components that allow the end-user to activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, are controlled according to the functionality of the activated encryption product. The notification and review requirements enumerated in this paragraph (b) of this section apply to commodities, software and components which activate cryptographic functionality in encryption products controlled under ECCNs 5A992 and 5D992. (See § 740.17 of the EAR for review and reporting requirements for commodities, software and components that enable cryptographic functionality in encryption products controlled under ECCNs 5A002 and 5D002.) This paragraph (b)(4) does not authorize the export or reexport of any activated encryption product. Separate review or authorization of the enabled encryption product is required.

(5) *Examples of mass market encryption products.* Subject to the requirements of the Cryptography Note (Note 3) in Category 5, Part 2, of the Commerce Control List, mass market encryption products include, but are not limited to, general purpose operating systems and desktop applications (e.g. e-mail, browsers, games, word processing, database, financial applications or utilities) designed for, bundled with, or pre-loaded on single CPU computers, laptops, or hand-held

devices; commodities and software for client Internet appliances and client wireless LAN devices; home use networking commodities and software (e.g. personal firewalls, cable modems for personal computers, and consumer set top boxes); portable or mobile civil telecommunications commodities and software (e.g. personal data assistants (PDAs), radios, or cellular products); and commodities and software exported via free or anonymous downloads.

20. Supplement No. 6 to part 742 is revised to read as follows:

Supplement No. 6 to Part 742—Guidelines for Submitting Review Requests for Encryption Items

Review requests for encryption items must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, and supported by the documentation described in this Supplement, in accordance with the procedures described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' or ''License Exception ENC'' (whichever is applicable) in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. BIS recommends that review requests be delivered via courier service to: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230. For electronic submissions via SNAP, you may fax a copy of the support documents to BIS at (202) 219–9179 or –9182 or you may deliver the documents via courier service to: Bureau of Industry and Security, Information Technology Controls Division, Room 2625, 14th Street and Pennsylvania Ave., NW. Washington, DC 20230. In addition, you must send a copy of your review request and all support documents to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Fort Meade, MD 20755–6000. For all review requests of encryption items, you must provide brochures or other documentation or specifications related to the technology, commodity or software, relevant product descriptions, architecture specifications, and as necessary for the review, source code. You also must indicate whether there have been any prior reviews of the product, if such reviews are applicable to the current submission. In addition, you must provide the following information in a cover letter accompanying your review request:

(a) State the name of the encryption item being submitted for review;

(b) State that a duplicate copy has been sent to the ENC Encryption Request Coordinator;

(c) For review requests for a commodity or software, provide the following information:

(1) Description of all the symmetric and asymmetric encryption algorithms and key lengths and how the algorithms are used. Specify which encryption modes are supported (e.g., cipher feedback mode or cipher block chaining mode).

(2) State the key management algorithms, including modulus sizes, that are supported.

(3) For products with proprietary algorithms, include a textual description and the source code of the algorithm.

(4) Describe the pre-processing methods (e.g., data compression or data interleaving) that are applied to the plaintext data prior to encryption.

(5) Describe the post-processing methods (e.g., packetization, encapsulation) that are applied to the cipher text data after encryption.

(6) State the communication protocols (e.g., X.25, Telnet or TCP) and encryption protocols (e.g., SSL, IPSEC or PKCS standards) that are supported.

(7) Describe the encryption-related Application Programming Interfaces (APIs) that are implemented and/or supported. Explain which interfaces are for internal (private) and/or external (public) use.

(8) Describe whether the cryptographic routines are statically or dynamically linked, and the routines (if any) that are provided by third-party modules or libraries. Identify the third-party manufacturers of the modules or toolkits.

(9) For commodities or software using Java byte code, describe the techniques (including obfuscation, private access modifiers or final classes) that are used to protect against decompilation and misuse.

(10) State how the product is written to preclude user modification of the encryption algorithms, key management and key space.

(11) For products that qualify as ''retail'', explain how the product meets the listed criteria in § 740.17(b)(3) of the EAR.

(12) For products which incorporate an open cryptographic interface as defined in part 772 of the EAR, describe the Open Cryptographic Interface.

(d) For review requests regarding components, provide the following additional information:

(1) Reference the application for which the components are used in, if known;

(2) State if there is a general programming interface to the component;

(3) State whether the component is constrained by function; and

(4) Identify the encryption component and include the name of the manufacturer, component model number or other identifier.

(e) For review requests for source code, provide the following information:

(1) If applicable, reference the executable (object code) product that was previously reviewed;

(2) Include whether the source code has been modified, and the technical details on how the source code was modified; and

(3) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines and their related calls.

(f) For step-by-step instructions and guidance on submitting review requests for encryption items, visit our webpage at www.bis.doc.gov/Encryption and click on the navigation button labeled ''Guidance''.

PART 748—[AMENDED]

21. Section 748.3 is amended by revising the section heading, by adding two new sentences at the end of paragraph (a), by removing paragraph (b)(3), and by adding a new paragraph (d), to read as follows:

§ 748.3 Classification Requests, Advisory Opinions, and Encryption Review Requests.

(a) * * * The encryption requirements in the EAR require that certain encryption items be reviewed by BIS in order for them to be eligible for export or reexport under License Exception ENC (see § 740.17 of the EAR) or to be released from ''EI'' controls (see § 742.15(b)(2) of the EAR). BIS makes its determination based on the submission of a review request prepared in accordance with the instructions in Supplement No. 6 to Part 742 of the EAR.

* * * * *

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from ''EI'' controls. Refer to § 742.15(b) and Supplement 6 to part 742 of the EAR for instructions regarding mass market encryption commodities and software. Refer to § 740.17 of the EAR for the provisions of License Exception ENC.

PART 770—[AMENDED]

22. Section 770.2 is amended by revising paragraph (n) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(n) *Interpretation 14:* Encryption commodity and software reviews. Review of encryption commodities or software is required to determine the eligibility of certain encryption items under License Exception ENC (see § 740.17 of the EAR) or to release certain encryption items from ''EI'' controls (see § 742.15(b)(2) of the EAR). Note that subsequent bundling, patches, upgrades or releases, including name changes, may be exported or reexported under the applicable provisions of the EAR without further review as long as the functional encryption capacity of the originally reviewed product has not

been modified or enhanced. This interpretation does not extend to products controlled under a different category on the CCL.

PART 772—[AMENDED]

23. Section 772.1 is amended by revising the definition of ''Cryptanalytic items'' to read as follows:

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

* * * * *

''*Cryptanalytic items*''. Systems, equipment, applications, specific electronic assemblies, modules and integrated circuits designed or modified to perform cryptanalytic functions, software having the characteristics of cryptanalytic hardware or performing cryptanalytic functions, or technology for the development, production or use of cryptanalytic commodities or software.

Notes: 1. Cryptanalytic functions may include cryptanalysis, which is the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data including clear text. (ISO 7498–2–1988(E), paragraph 3.3.18).

2. Functions specially designed and limited to protect against malicious computer damage or unauthorized system intrusion (e.g., viruses, worms and trojan horses) are not construed to be cryptanalytic functions.

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to Part 774 (The Commerce Control List)—[Amended]

24. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', immediately following the heading II—''INFORMATION SECURITY'', is amended by revising Notes 2 and 3, and by adding a new Nota Bene (''N.B.''), immediately following Note 3, to read as follows:

Category 5—Telecommunications and ''Information Security''

* * * * *

Part 2—''Information Security''

* * * * *

Note 2: Category 5, part 2, encryption products, when accompanying their user for the user's personal use or as tools of trade, are eligible for License Exceptions TMP or BAG, subject to the terms and conditions of these License Exceptions.

Note 3: Cryptography Note: ECCNs 5A002 and 5D002 do not control items that meet all of the following:

a. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

1. Over-the-counter transactions;
2. Mail order transactions;
3. Electronic transactions; or
4. Telephone call transactions;

b. The cryptographic functionality cannot be easily changed by the user;

c. Designed for installation by the user without further substantial support by the supplier; and

d. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs (a) through (c) of this note.

N.B. to Cryptography Note: Mass market encryption commodities and software eligible for the Cryptography Note are subject to the notification or review requirements described in § 742.15(b)(1) and (b)(2) of the EAR, unless specifically excluded from these requirements by § 742.15(b)(3) of the EAR. Mass market commodities and software employing a key length greater than 64 bits for the symmetric algorithm must be reviewed in accordance with the requirements of § 742.15(b)(2) of the EAR in order to be released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002. All other mass market commodities and software eligible for the Cryptography Note are controlled under ECCN 5A992 or 5D992 (without review) and may be exported or reexported to most destinations without a license, following notification, in accordance with the requirements of § 742.15(b)(1) of the EAR.

* * * * *

25. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part 2—''Information Security'', is amended by revising ECCN 5D002 to read as follows:

5D002 Information Security—''Software''

License Requirements

Reason for Control: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

''EI'' applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p.228) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002.

Note: Encryption software controlled for ''EI'' reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR. See § 740.13(e) of the EAR for information on releasing certain source code (and corresponding object code) which would be considered publicly available from ''EI'' controls.

Note: After notification to BIS, 56-bit encryption items (including key management products not exceeding 512 bits) and up to (and including) 64-bit mass market encryption commodities and software are released from ''EI'' and ''NS'' controls. After a review by BIS, all other mass market encryption commodities and software eligible for the Cryptography Note also may be released from ''EI'' and ''NS'' controls. See § 742.15(b)(1) and (b)(2) of the EAR.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value.

Related Controls: This entry does not control ''software'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''software'' providing any of the functions of equipment excluded from control under ECCN 5A002. These items are controlled under ECCN 5D992.

Related Definitions: 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security'.

Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 5A002, 5B002, or 5D002.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E002.

c. Specific ''software'' as follows:

c.1. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;

c.2. ''Software'' to certify ''software'' controlled by 5D002.c.1.

Dated: May 30, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–13990 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AB89

Registration of Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is adopting amendments to its rules, which governs registration of intermediaries in the futures industry. These amendments are necessary to facilitate the change from the current paper-based registration system to online registration. It is expected that the online registration system will provide applicants with a more streamlined process for registering, resulting in less redundancy and quicker processing of applications by the National Futures Association. The amendments will permit a floor broker that receives a temporary license to act in the capacity of a fully registered floor broker, and an applicant for registration as an associated person to be granted a temporary license upon filing the Form 8–R and a sponsor's certification, but prior to submission of fingerprints. Several other amendments are technical in nature to accommodate the transfer from a paper-based to an electronic system and to recognize derivatives transaction execution facilities.

EFFECTIVE DATE: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has previously delegated the authority to process applications for registration of intermediaries and floor traders under the Commodity Exchange Act (the ''Act'')[1] to the National Futures Association (''NFA'').[2] NFA submitted to the Commission, for its approval, pursuant to section 17(j) of the Act, amendments to NFA registration rules that would require applicants seeking registration under the Act as futures commission merchants (''FCMs''), introducing brokers (''IBs''), commodity pool operators (''CPOs''), commodity trading advisors (''CTAs''), leverage transaction merchants (''LTMs''), associated persons (''APs''), floor brokers (''FBs''), and floor traders (''FT'') to file applications electronically through an online registration system.[3] On May 30, 2002, the Commission approved these proposed amendments to the NFA registration rules.

Technological advancements have resulted in fundamental changes in the futures industry, as is the case in almost every other industry. The Commission has encouraged and attempted to facilitate the use of electronic technology in the futures industry.[4] The Commission also believes that it must constantly look at ways that technology can better assist the Commission in fulfilling its regulatory mission.[5]

NFA's new online registration system should streamline the registration process and result in a system that is easier to use for applicants, registrants, and regulators. The new system should make it quicker and easier for persons to provide NFA with the required information and enable NFA to process more efficiently this information in determining whether to grant an application for registration, while maintaining most of the features of the current system. Additionally, information on registrants should be more readily accessible by the public, NFA, and the Commission.

On April 12, 2002, in order to facilitate the change to an online registration system, the Commission proposed the rule amendments being adopted herein.[6] The Commission did not receive any comment letters on the proposed amendments.

II. The Rule Amendments

A. Additional Categories and Sponsors

As part of the new online registration system, applicants that have a current active status, either as a registrant or as a listed principal, and who seek to add an additional registration category will be required to file a ''short path'' version of the form required for a new applicant.[7] This ''short path'' form will require the applicant to supply only necessary information that is not already in the registration database. For example, if an entity registered as an IB applies to become registered also as a CTA, the entity will complete the ''short path'' Form 7–R, which requires the applicant to select the appropriate categories for which it would be registered and to indicate the category in which it intends to vote on NFA membership matters. Likewise, natural persons currently registered as APs, FBs, FTs, or listed as branch managers or principals that seek to add an additional category will complete a ''short path'' Form 8–R.

The Form 7–R will no longer require an applicant to list principals that are natural persons because when a Form 8–R is filed indicating a principal category, the system will require the appropriate information, including information regarding the sponsor firm. Currently, under Commission Rule 3.10(a)(2)(i),[8] each Form 7–R must be accompanied with a Form 8–R and fingerprints for each natural person who is a principal of the applicant. The rule does not apply to a principal that has a current Form 8–R on file. However, because the necessary information about the firm for whom a natural person is a principal is gathered through the Form 8–R, if a natural person with a current active status seeks to add a principal category or to become a principal of another firm, then it will be necessary for a ''short path'' Form 8–R to be filed.[9] Accordingly, the Commission is amending Rule 3.10(a)(2)(i) to reflect this change.

Currently, a person who is unconditionally registered as an AP may become associated as an AP with another sponsor if the new sponsor files a Form 3–R with NFA. The Form 3–R must contain a certification signed by each sponsor acknowledging that each sponsor, in addition to being responsible for supervising the AP, is jointly and severally liable for the conduct of the AP. As noted above, under the new online registration system, APs with a current status seeking to add another sponsor will file

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] *See,* e.g., 58 FR 19657 (Apr. 15, 1993) (floor traders); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof).

[3] Agricultural trade option merchants as well as applicants for registration as FCMs and IBs pursuant to section 4f(a)(2) of the Act (notice-registration of securities broker-dealers whose only futures-related activity involves security futures products) will still file paper applications.

[4] For example, the Commission has created a Technology Advisory Committee, *see* 66 FR 57427 (Nov. 15, 2001); *see also* 65 FR 12466 (Mar. 9, 2000) (adopting new Rule 1.4, which permits the use of electronic signatures in lieu of handwritten signatures where the Act or Commission rules require a customer's signature). Additionally, the Commission had previously authorized NFA to implement a pilot program that allowed certain registrants to enter registration data electronically for APs and branch office managers of these registrants. 55 FR 35925 (Sep. 4, 1990).

[5] For example, the National Association of Securities Dealers, the registered national securities association responsible for processing the registration filings of certain persons required to register with the Securities and Exchange Commission, has required all registration filings to be submitted via the World Wide Web to its Central Registration Depository system since 1999.

[6] 67 FR 19358 (Apr. 19, 2002).

[7] Currently, such applicants are required to file a Form 3–R (which is akin to the new ''short path'' form) or Form 8–R, depending upon their current status and the additional category requested.

[8] Commission rules referred to herein may be found at 17 CFR Chap. I (2001).

[9] Fingerprints will still not be required.

a ''short path'' Form 8–R, which, similar to the current paper Form 3–R, will require the submission of only that information not already in the database required for adding the applicable sponsor. Accordingly, the Commission is amending Rule 3.12 to reflect the fact that the sponsor must file a Form 8–R instead of the Form 3–R.

Maintaining the requirement that all of the sponsors of the AP sign and file the acknowledgment mandated under the current rule in an electronic environment would require sending the filing via traditional delivery or via a complicated and costly electronic signature system, both resulting in a delay in adding the sponsor. Additionally, the Commission believes it is unnecessary to require the signed acknowledgment where the rule makes clear that a sponsor is responsible for supervising its APs and is liable for their conduct.[10] Accordingly, the Commission is removing the requirement that a signed certification be submitted to add an additional sponsor. Instead, the NFA, upon receipt of the Form 8–R for an AP seeking to add a sponsor, shall notify the existing sponsors of the AP of the application. The amended rule will continue to hold each sponsor responsible for the supervision of the AP and make each sponsor jointly and severally liable for the conduct of the AP with respect to customers common to that sponsor and another sponsor.[11] Requiring a signed acknowledgement of this fact would present an added burden for registrants that the Commission does not believe is necessary.

NFA's amended Registration Rule 207(a) will permit a person whose application for registration as an AP is pending, or who is temporarily licensed as an AP, to apply to become registered as an AP of another sponsor. Pursuant to amended Registration Rule 207(b), the AP will become registered as an AP of the new sponsor only if he or she is already registered as an AP with another sponsor. The Commission believes that NFA's amended Registration Rule 207 is consistent with Commission Rule 3.12(f) as amended herein.

B. Updates

1. Annual and Triennial Updates

Pursuant to Commission Rule 3.31, any applicant or registrant must promptly correct any inaccuracy in its Form 7–R or Form 8–R. Accordingly, registrants are under an ongoing duty to ensure that their registration filings are accurate. Currently, pursuant to Rule 3.10(d), a firm is required to file annually with NFA a Form 7–R. For this purpose, NFA sends to each firm a pre-printed paper copy of the firm's Form 7–R that the firm must then update and file with NFA. Similarly, pursuant to Rule 3.11(d), every three years the NFA provides each registered FB and FT with a paper printout of the information contained in NFA's registration database concerning the registrant. If the information in the printout is inaccurate, the registrant must correct the information and return the printout to NFA. Otherwise, the registrant is not required to return the printout and is deemed to have recertified the registration information contained in the printout.

As noted above, these persons are already under an ongoing obligation to update the applicable registration information when necessary. The continuation of the annual and triennial update process is redundant and results in unnecessary costs to both NFA and the registrant. Accordingly, the Commission is amending the rules to delete these requirements.

2. Changes in Form of Organization

Pursuant to Rule 3.31, a change in the form of organization of a registrant requires that the registrant correct its Form 7–R. Currently, when a firm files a Form 3–R to report a change in the form of the organization, it must be accompanied by a certification ''signed in a manner sufficient to be binding under local law'' that the registrant will be liable for all obligations of the pre-existing organization. Similar to the acknowledgment currently required when an AP adds a sponsor, the Commission believes it is an unnecessary burden on registrants to require a signed certification by the registrant acknowledging its liability for the obligations of the pre-existing organization when Commission rules, and NFA rules, can make clear the registrants' responsibilities. Accordingly, the Commission is amending Rule 3.31 to make clear that, when a registrant reports a change in the form of its organization by filing a Form 3–R under Rule 3.31, it remains liable for all obligations of the pre-existing organization.

Notwithstanding the above, under the amendments being adopted herein, where a registrant is ceasing to be or is becoming a sole proprietorship, the registrant will have to file a Form 7–W, withdrawing the registration of the pre–existing organization, and file a Form 7–R regarding the new organization. A change to or from a sole proprietorship to another form of business entity, such as a corporation, is not a mere change in the form of organization. There is a fundamental difference between a natural person and a corporation. A corporation undertaking business that was being conducted by a sole proprietor is not a continuation of an existing organization, but is the creation of a completely new and separate legal entity, thus requiring the filing of a Form 7–W regarding the pre-existing organization and a Form 7–R on behalf of the new organization.

C. Temporary Licenses

1. Initial Filing

Pursuant to Commission Rule 3.40, an applicant for registration as an AP, FB, or FT, may be granted a temporary license upon the filing of a completed Form 8–R, the applicant's fingerprints, and, (a) if the applicant is applying for registration as an AP, the required sponsor's certification, or (b) if the applicant is applying for registration as an FB or FT, the required proof of having been granted trading privileges by a contract market. Under the online registration system, there will be a delay between the filing of the Form 8–R, which will occur instantaneously via the Internet, and the filing of the applicant's fingerprints, which must still be physically provided on a fingerprint card. Accordingly, the Commission is amending Rule 3.40 to provide that NFA may grant a temporary license to an applicant for registration as an AP upon filing of the completed Form 8–R and the sponsor's certification, but before the applicant's fingerprints are filed. The fingerprints must be filed with NFA within 20 days. This will not result in any change of the policies that NFA uses in determining to grant a temporary license to an AP.

FBs and FTs will have to continue to file the current documents required under the rule, including fingerprints, to receive a temporary license. Temporary licenses for FBs and FTs will not be granted online because, to be eligible for a temporary license, FB and FT applicants must have been granted trading privileges on a contract market or DTF. It has been the experience of the Commission and NFA that FB and FT applicants, especially new applicants, almost never receive trading privileges before applying for registration. In fact, the applicant's fingerprint cards and registration fees are almost always received before an exchange grants them trading privileges. Moreover, if NFA were to grant an FB or FT applicant a

[10] Existing Commission rules also make clear the sponsor's responsibility and liability to supervise its APs. *See,* e.g., Rule 166.3.

[11] NFA Registration Rule 207, as amended, holds sponsors to the same standards.

temporary license and later withdraw it, such action could have larger financial implications for the individual than would be the case for an AP applicant. For example, an FB or FT applicant must make sizeable investments to obtain trading privileges on the floor of an exchange.

2. Restrictions on Activities

Currently, an applicant for registration as an FB who is granted a temporary license, and has not been registered as an FB during the preceding 60 days, is only permitted to act as an FT. The Commission does not believe that this difference is required. The fitness standards for becoming registered as an FB or an FT are the same. Likewise, the fitness standards for becoming temporarily licensed as an FB or an FT should be the same. When the Commission adopted rules that limited FBs granted temporary licenses to acting as FTs, it noted that, after gaining further experience in the area, it might revisit the issue.[12] In the nine years since applicants for registration as FBs have been permitted to receive a temporary license, the Commission and NFA have found that it is very rare that a temporary license granted to an applicant for registration as an FB has had to be terminated as a result of the ensuing fitness check. This is attributable to the fact that, in order to be granted a temporary license as an FB, an applicant must have been granted trading privileges by a contract market and a contract market conducts its own fitness check before granting a person trading privileges. Generally, information that would prevent an applicant from becoming registered with the Commission as an FB would also prevent the person from obtaining trading privileges on a contract market. Accordingly, the Commission is amending its rules to permit an applicant for registration as an FB who has been granted a temporary license to act in the capacity of an FB for the duration of the temporary license.

3. Special Temporary Licenses

Currently, pursuant to Commission Rule 3.11(c)(1), an FB or FT, whose registration has terminated within the preceding sixty days, and who has been granted trading privileges at a new contract market that has filed with NFA the certification required under Rule 3.40(c), regarding the applicant, will be granted a temporary license to act as an FB or FT upon mailing a Form 8–R, a fingerprint card, and if applicable, a supplemental sponsor certification. These are the same submissions necessary to be granted a temporary license under Commission Rule 3.40. However, pursuant to Rule 3.11(c)(1), once the applicant has mailed the Form 8–R and the fingerprint card to NFA the applicant's temporary license will be granted, as opposed to the requirement under Rule 3.40 that the documents be filed with NFA. However, the applicant must have been granted trading privileges by a new contract market and the contract market must have made the required certification before the applicant could be granted the temporary license. The Commission does not believe that it is necessary to maintain both rules for granting temporary licenses to FBs and FTs when the practical result under either rule is the same. Accordingly, the Commission is removing Rule 3.11(c)(1). All temporary licenses for FBs and FTs will be granted pursuant to Rule 3.40.

The Commission is also removing Rule 3.11(c)(2). Currently, pursuant to Commission Rule 3.11(c)(2), any FB or FT who continuously maintains trading privileges at a contract market may change their registration category from an FB to an FT or vice versa upon mailing to NFA a completed Form 3–R indicating an intention to change categories. As noted above, under NFA's online registration system, applicants for adding additional registration categories will file a ''short path'' Form 8–R. Additionally, under Commission Rule 3.11(a), an applicant for registration as an FB or FT is not required to file a fingerprint card if the applicant has a current Form 8–R on file with NFA.[13] Accordingly, removing Rule 3.11(c)(2) should not negatively affect those already registered as FBs or FTs seeking to switch registration categories.

Similar to the granting of a temporary license as a new applicant for AP registration, as discussed above, the Commission is also amending Rule 3.12(d) to permit the granting of a special temporary license to an AP whose registration terminated within the preceding 60 days upon the filing of a completed Form 8–R, but prior to the applicant's fingerprints being filed with NFA. The fingerprints must be filed with NFA within 20 days.

D. FCM and IB Withdrawal From Registration

Currently, pursuant to Commission Rule 3.33(c)(1), when an FCM or an independent IB is requesting withdrawal from registration because it has ceased engaging in activities that require registration, their request for withdrawal must be accompanied by Form 1–FR–FCM or 1–FR–IB[14] completed within a month of the date of the request for withdrawal. Pursuant to NFA Financial Requirement section 1(b), each FCM for which NFA is the designated self-regulatory organization must file a Form 1–FR–FCM for each month end. Accordingly, for such FCMs, a Form 1–FR–FCM for the previous month will have already been filed. Additionally, an IB is not permitted to hold customer funds. Therefore, requiring an IB seeking withdrawal to file Form 1–FR–IB in every instance is unnecessary. Moreover, if there was a reason for the Commission to be concerned about the financial state of a particular IB requesting withdrawal, the Commission may, pursuant to Rule 3.33(f)(4), require that the IB provide the appropriate financial statements, including a Form 1–FR–IB, before it is permitted to withdraw its registration. Accordingly, the Commission is removing Rule 3.33(c)(1).

E. Certification Signatories

Commission Rules 3.12(c)(1), 3.12(d)(3) (sponsor certifications regarding an applicant for AP registration), 3.33(b) (Form 7–W for a firm's withdrawal of registration), 3.44(a)(4) (FCM certification regarding a temporary license for an IB) require that only certain persons may sign the pertinent documents on behalf of the registrant.[15] Under the online registration system, where the pertinent documents will be filed electronically, it would be difficult, if not impossible, to ensure that only one of the enumerated persons was actually submitting the document.

NFA, in its amended Registration Rule 802, provides that the electronic filing of required documents constitutes, among other things, the applicant's, registrant's, or sponsor's certification that the person who electronically files the document is authorized by the entity to make the required certifications, representations, requests, acknowledgements, authorizations, and agreements contained therein.

[12] 58 FR 19575, 19583 (Apr. 15, 1993).

[13] Amended NFA Registration Rule 205(b) similarly provides that an applicant for FB or FT registration need not file a fingerprint card or pay the registration fee if the applicant has a current Form 8–R on file.

[14] The Forms 1–FR–FCM and 1–FR–IB are statements of the financial condition of an FCM or IB respectively, used, in part, to ensure compliance with applicable Commission minimum financial requirements.

[15] For example, Rule 3.12(c)(1) requires that the sponsor's certification be signed by an officer if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

Moreover, amended NFA Registration Rule 801(b) provides that any registration filing made on behalf of a registrant or applicant by a person authorized by the applicant or registrant shall be deemed to be a filing of such registrant or applicant.[16]

Therefore, the entity filing the pertinent certification or form under Commission Rules 3.12(c)(1), 3.33(b), 3.44(a)(4) will be held accountable for any representations in the applicable document. Accordingly, the Commission is amending these rules to make clear that a person duly authorized by the registrant or sponsor must file the relevant certification or form.

F. Other Amendments

The Commission is also making certain technical amendments. For example, the Commission is amending Rules 3.11 and 3.31 so as to reference both contract markets and derivatives transaction execution facilities. Additionally, the Commission is removing references in part 3 to part 180, which has been removed and reserved.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[17] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[18] The Commission has previously determined that FCMs, registered CPOs, and LTMs are not small entities for the purpose of the RFA.[19] Therefore, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the rule amendments will not place any additional burdens upon such parties since all registrants are already subject to the registration filing requirements of the Act and part 3 of the Commission's regulations. To the contrary, the amendments will help to streamline and simplify the current registration procedures. The Commission notes that no comments were received from the public on the RFA and its relation to the rule amendments.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[20] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements. The Commission did not receive any comments on any potential paperwork burden associated with these amendments. The Commission has submitted hard copies of how the screens will appear in the electronic registration system to the Office of Management and Budget.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments are intended to facilitate a streamlined registration process that would result in less redundancy and quicker processing of applications. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendments are expected to lessen the burden imposed upon applicants in the registration process, they do not reduce the fitness standards for becoming registered with the Commission. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by more quickly facilitating entry into the industry and by enabling information to be collected and made available in a more timely manner.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendments, in facilitating the change to an online registration system, are expected to result in a registration system that is easier to use and more efficient in its processing of registration applications. Additionally, the system should permit more information about registrants to be readily accessible by the public more quickly.

After considering these factors, the Commission has determined to adopt the amendments discussed above. The Commission invited public comment on its application of the cost-benefit provision. The Commission did not receive any comments regarding the application of the cost-benefit provision.

D. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception ''for good cause found and published with the rule.''[21] On June 3, 2002, NFA will bring its new registration system online. As part of this changeover, NFA has shut down its old mainframe-based registration database, and is currently not capable of accepting hardcopies of registration filings and entering the information into its registration database system. Moreover, the Commission

[16] Under the amended NFA rules, FBs and FTs may not authorize any other person to file a Form 8–R on their behalf. Additionally, persons for whom a sponsor has filed a Form 8–R must verify the information themselves and may not authorize any other person to do so on their behalf.

[17] 5 U.S.C. 601 *et seq.*

[18] 47 FR 18618 (April 30, 1982).

[19] *Id.* at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs).

[20] 44 U.S.C. 3501 *et seq.*

[21] 5 U.S.C. 553(d)(3).

notes that NFA has spent much of the last few months making the futures industry aware of the change to an online registration system, through its Web site as well as seminars and training workshops held in New York, New Jersey, and Chicago. Accordingly, the Commission has determined to make the rule amendments being adopted herein effective immediately.

Lists of Subjects in 17 CFR Part 3

Brokers, Commodity Futures, Registration.

For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. Section 3.2 is amended by revising paragraph (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

* * * * *

(c) The National Futures Association shall notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, and each designated contract market or registered derivatives trading execution facility that has granted the applicant trading privileges in the case of an applicant for registration as a floor broker or floor trader, if registration has been granted under the Act.

(1) If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the sponsor that only a temporary license has been granted.

(2) If an applicant for registration as a floor broker or floor trader receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the designated contract market or registered derivatives trading execution facility that has granted the applicant trading privileges that only a temporary license has been granted.

* * * * *

3. Section 3.10 is amended by revising paragraph (a)(2)(i) and by removing paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) * * *

(2)(i) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however,* that if such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) or has a current Form 8-R on file with the Commission or the National Futures Association, the fingerprints of that principal do not need to accompany the Form 7-R.

* * * * *

4. Section 3.11 is amended by revising paragraphs (a)(2), (a)(3), and (b), and by removing paragraphs (c) and (d) to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) * * *

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market or registered as a derivatives transaction execution facility by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will notify the applicant and any contract market or derivatives transaction execution facility that has granted the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets or derivatives transaction execution facilities have ceased: Provided, That if a floor broker or floor trader whose trading privileges on all contract markets or derivatives transaction execution facilities have ceased for reasons unrelated to any Commission action or any contract market or derivatives transaction execution facility disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market or derivatives transaction execution facility where he held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 8-R or Form 3-R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d), each contract market or derivatives transaction execution facility that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person's trading privileges on such contract market or derivatives transaction execution facility have ceased.

5. Section 3.12 is amended as follows:

a. By revising paragraphs (c)(1), (c)(4), and the introductory text of paragraph (d)(1);

b. By redesignating paragraphs (d)(2) and (d)(3) as (d)(3) and (d)(4) and revising paragraphs (d)(3) and (d)(4) as redesignated;

c. By adding a new paragraph (d)(2); and

d. By revising paragraph (f).

The revisions and addition read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants.

* * * * *

(c) * * *

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless a person duly authorized by the sponsor certifies that:

* * * * *

(4) When the Commission or the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will

notify the sponsor that has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons. (1) Registration terminated within the preceding 60 days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding 60 days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon filing by that sponsor with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto and, if applicable, a Supplemental Sponsor Certification Statement filed on behalf of the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B)) stating that the new sponsor will supervise the applicant in accordance with conditions identical to those agreed to by the previous sponsor, which includes certifications stating:

* * * * *

(2) Any temporary license granted pursuant to paragraph (d)(1) of this section shall be terminated immediately upon notice to the sponsor of the person granted the temporary license that, within 20 days following the date the temporary license was issued, the National Futures Association has not received the applicant's fingerprints.

(3) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.42 and 3.43.

(4) The certifications permitted by paragraphs (d)(1)(i) and (v) of this section must be filed by a person duly authorized by the sponsor. The certifications permitted by paragraphs (d)(1)(ii)–(iv) must be filed by the applicant for registration as an associated person.

* * * * *

(f) *Reporting of dual and multiple associations.* (1)(i) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B)) files with the National Futures Association a Form 8-R in accordance with the instructions thereto.

(ii) NFA shall notify each sponsor of the associated person that the associated person has applied to become associated with another sponsor.

(iii) Each sponsor of the associated person shall supervise that associated person and each sponsor is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customers' orders,

(B) Solicitation of funds, securities, or property for a participation in a commodity pool,

(C) Solicitation of a client's or prospective client's discretionary account,

(D) Solicitation or acceptance of leverage customers' orders for leverage transactions, and

(E) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 8-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

* * * * *

6. Section 3.31, is amended as follows:

a. By revising paragraph (a)(1);

b. By redesignating paragraph (a)(2) as paragraph (a)(3);

c. By adding a new paragraph (a)(2);

d. By revising newly redesignated paragraph (a)(3); and

e. By amending paragraph (d) by adding ''or derivatives transaction execution facility'' after each instance of ''contract market''.

The revisions and addition read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3-R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7-W regarding the pre-existing organization and a Form 7-R regarding the newly formed organization.

(2) If a registrant files a Form 3-R, pursuant to this section, to report a change in the form of the organization of the registrant, the registrant shall be liable for all obligations of the pre-existing organization under the Act, as it may be amended from time to time, and the rules, regulations, or orders which have been or may be promulgated thereunder.

(3) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and the new principal is not a natural person, the registrant shall file a Form 3-R filed in accordance with the requirements of paragraph (a)(1) of this section. *Provided, however,* that if the new principal is a natural person, the registrant shall file a Form 8-R, completed in accordance with the instructions thereto and executed by such person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8-R for each such principal shall be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) or such principal has a current Form 8-R on file with the Commission or the National Futures Association.

* * * * *

§ 3.33 [Amended]

7. Section 3.33 is amended as follows:

a. By amending the introductory text of paragraph (b) by removing ''the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation,'' and by adding in its place ''a person duly authorized by the registrant'';

b. By removing paragraph (b)(3);

c. By redesignating paragraphs (b)(4) through (b)(7) as (b)(3) through (b)(6);

d. By removing paragraph (c)(1);

e. By redesignating paragraph (c)(2) as (c);

f. By removing paragraph (d); and

g. By amending paragraph (e) by removing ''sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606'' and adding in its place ''filed with the National Futures Association''.

8. Section 3.40 is revised to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

(a) Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart:

(1) The National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8–R, properly completed in accordance with the instructions thereto; and

(ii) The sponsor's certification required by § 3.12(c): *Provided, however,* that the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose must be filed with the National Futures Association within 20 days following the date the temporary license is issued; *and, provided further,* that failure to file the fingerprints within this period will result in the termination of the temporary license immediately upon notice to the applicant's sponsor that the National Futures Association has not received the applicant's fingerprints.

(2) The National Futures Association may grant a temporary license to any applicant for registration as a floor broker or floor trader upon the contemporaneous filing with the National Futures Association of:

(i) A Form 8–R, properly completed in accordance with the instructions thereto;

(ii) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose;

(iii) A Supplemental Sponsor Certification Statement executed by a sponsor meeting the requirements under § 3.60(b)(2)(i), if the applicant is subject to an order imposing conditions on the applicant's registration; and

(iv) Evidence that the applicant has been granted trading privileges by a contract market or derivatives transaction execution facility that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

(b) The failure of an applicant or the applicant's sponsor to respond to a request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

(c) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations, and orders thereunder, an applicant for registration as an associated person who has received notification that a temporary license has been granted may act in the capacity of an associated person, an applicant for registration as a floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader, and an applicant for registration as a floor broker who has received written notification that a temporary license has been granted may act in the capacity of a floor broker.

§ 3.41 [Removed]

9. Section 3.41 is removed.

10. Section 3.42 is amended by revising paragraphs (a)(2), (a)(3), (a)(4) and (a)(6) to read as follows:

§ 3.42 Termination.

(a) * * *

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets which filed the certification described in § 3.40;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40;

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under sections 6(e), 6b, or 6c(d) of the Act;

* * * * *

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, registered derivatives transaction execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market, registered derivatives transaction execution facility, or other appropriate arbitration forum.

* * * * *

11. Section 3.44 is amended by revising the introductory text of paragraph (a)(4) and revising paragraph (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(4) A certification executed by a person duly authorized by the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, stating that:

* * * * *

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided,* that a principal who has a current Form 8–R on file with the National Futures Association or the Commission is not required to submit a fingerprint card.

* * * * *

12. Section 3.46 is amended by revising paragraphs (a)(6) and (a)(8) to read as follows:

§ 3.46 Termination

(a) * * *

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted unders sections 6(e), 6b, or 6c(d) of the Act;

* * * * *

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, registered derivatives transaction execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market, registered derivatives transaction execution

facility, or other appropriate arbitration forum.

* * * * *

Issued in Washington, DC, on May 30, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–14027 Filed 6–5–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–30]

RIN 1515–AD12

Extension of Import Restrictions Imposed on Archaeological and Ethnological Materials From Peru

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In T.D. 97–50, the Customs Regulations were amended to reflect the imposition of import restrictions on certain archaeological and ethnological materials originating in Peru. These restrictions were imposed pursuant to an agreement between the United States and Peru that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that conditions continue to warrant the imposition of these import restrictions for a period of five years from June 9, 2002. Thus, this document amends the Customs Regulations to reflect that the import restrictions continue. T.D. 97–50 contains the Designated List of Archaeological and Ethnological Materials that describes the articles to which the restrictions and this extension of restrictions apply.

EFFECTIVE DATE: This regulation becomes effective on June 6, 2002.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 927–2336; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U. S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (the Act), the United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. The U.S. Customs Service issued T.D. 97–50 (62 FR 31713, June 11, 1997) amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions for a period of five years.

Prior to the issuance of T.D. 97–50, Customs issued T.D. 90–37 (55 FR 19029, May 7, 1990) imposing emergency import restrictions on certain archaeological materials of Peru from the Sipan Archaeological Region forming part of the remains of the Moche culture. Under T.D. 90–37, § 12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency restrictions was amended accordingly. This emergency protection was extended in T.D. 94–54 (59 FR 32902, June 27, 1994). Subsequently, the archaeological materials covered by T.D. 90–37 were subsumed in T.D. 97–50 when it was published in 1997, at which time the emergency restrictions of T.D. 90–37 (as extended by T.D. 94–54) were removed from § 12.104g(b).

On March 5, 2002, the Assistant Secretary of Educational and Cultural Affairs, Department of State, after considering the findings and recommendations of the Cultural Property Advisory Committee and concluding that the cultural heritage of Peru continues to be in jeopardy from pillage of the archaeological and ethnological materials subject of the import restrictions of T.D. 97–50, made the necessary determinations to extend the import restrictions for an additional five years (in the Determination to Extend the Memorandum of Understanding Between the United States of America and the Government of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru, Signed on June 9, 1997). Accordingly, Customs is amending § 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Materials from Peru describing the materials covered by these import restrictions is set forth in T.D. 97–50. The list and accompanying image database may also be found at the following internet Web site address: *http://e.usia.gov/education/culprop.*

It is noted that the materials identified in T.D. 97–50 as ''certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru'' are referred to in the Determination to Extend as ''Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru.'' The materials identified in T.D. 97–50 and those identified in the Determination to Extend are one and the same materials.

The restrictions on the importation of these archaeological and ethnological materials from Peru are to continue in effect for five years from June 9, 2002. Importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Peru, or documentation showing that exportation from Peru occurred on or before June 11, 1997, or, with respect to materials from the Sipan archaeological region, on or before May 7, 1990. *See* 19 U.S.C. 2606(b)(1) and (2)(B); 19 CFR 12.104c(a) and (c).

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends import restrictions already imposed on the above-listed cultural property of Peru by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in Executive Order 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

2. In § 12.104g(a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Peru by adding ''extended by T.D. 02–30'' immediately after ''T.D. 97–50'' in the column headed ''T.D. No.''.

Approved: June 3, 2002

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–14219 Filed 6–5–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 822

[Docket No. 00N–1367]

Postmarket Surveillance

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is implementing the postmarket surveillance (PS) provisions of the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The purpose of this rule is to provide for the collection of useful data about devices that can reveal unforeseen adverse events or other information necessary to protect the public health.

DATES: This rule is effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: David L. Daly, Center for Devices and Radiological Health (HFZ–510), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3060.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is the Background of This Rulemaking?

In the **Federal Register** of August 29, 2000 (65 FR 52376), we (FDA) published a proposed rule implementing the PS provisions in section 522 (21 U.S.C. 360l) of the act, as amended by FDAMA. We provided a period of 90 days for comments from interested parties. We received comments from four entities. We summarize and discuss these comments below, and we have revised the final rule appropriately.

II. What Comments Did FDA Receive on the Proposed Rule? How Did These Comments Affect the Final Rule?

A. Organization and Format

(Comment 1) We received several comments commending the use of plain English, logical formatting, and the question and answer style.

We appreciate the positive comments and will continue to use the plain English concepts.

B. General Comments

(Comment 2) One comment suggested that § 822.1 be revised to include the statutory criteria for imposing PS. This would make the scope of the regulation clearer.

We agree, and have modified § 822.1 accordingly.

(Comment 3) Several comments expressed concern that the proposed rule would impose substantial, unnecessary burdens on device manufacturers, and proposed a number of changes that would reduce the burden. Individual changes are addressed in the appropriate regulation sections. One comment stated that existing systems, such as medical device reports (MDRs), are adequate to provide safety and effectiveness information.

We do not agree. If Congress thought that existing mechanisms were sufficient, it would not have provided for PS. We recognize the potential for PS to be burdensome, but do not agree that any burden imposed by PS would be unnecessary. We intend to impose PS only when necessary to address a postmarket public health question. We also intend to work with the affected manufacturer(s) to identify the least burdensome approach that will adequately address the surveillance question.

(Comment 4) Two comments stated that FDA does not have the authority to require clinical studies, citing the legislative history of FDAMA and the changes in language in the act from ''protocol'' to ''plan'' and ''investigator'' to ''designated person.''

We disagree. As originally enacted in the Safe Medical Devices Act of 1990 (SMDA), PS under section 522 of the act was automatically required for certain devices, and the statutory language allowed little flexibility in designing a PS study. In FDAMA, Congress eliminated this automatic PS, giving FDA discretion to require PS when appropriate, and also gave FDA greater discretion in crafting the form of the surveillance. This broader discretion means that we can accept PS plans that are less rigorous (and less burdensome) than clinical studies, such as literature reviews and analyses of complaint information. The agency expects that it would rarely if ever demand an adequate and well-controlled double-blind clinical trial as the only means of collecting clinical data to satisfy a PS requirement. On the other hand,

collection of clinical data may take many forms, and the agency continues to believe that prospective clinical data will be necessary in about 10 percent of all instances of PS. Congress addressed its concern that FDA not require burdensome longitudinal studies not by prohibiting clinical studies altogether but by limiting the duration of any PS study to 3 years unless manufacturers agree to a longer period. If no agreement can be reached, the dispute resolution process described in section 562 of the act (21 U.S.C. 360 bbb–1) will be used to resolve issues related to duration. This time limit on PS is incorporated into our regulations. Thus while FDAMA gave FDA power to eliminate unnecessary burden from PS, it does not prohibit us from requiring clinical studies where necessary to protect the public health and where conducted within applicable time limits.

(Comment 5) Two comments expressed concern that we intend to increase the amount of data required to support a new indication for use by imposing PS.

We do not intend to impose PS for every new indication for use, nor do we expect imposition of PS to increase the data requirements for a new indication for use. Instead, we expect PS to be used in some instances to shift some data collection from pre- to postmarket, allowing a device to reach the market sooner. For example, this mechanism could be used for a device that is going from clinical use to home use.

C. Notification

(Comment 6) Two comments stated that PS orders should contain the justification for selecting PS over other, less burdensome alternatives.

We agree that PS should not be imposed without considering less burdensome alternatives. Our guidance document entitled ''Criteria and Approaches for Postmarket Surveillance'' (*www.fda.gov/cdrh/modact/critappr.pdf*) discusses our present thinking on this and other criteria that we will use to determine whether to impose PS. We consider this justification part of the ''reason that we are requiring postmarket surveillance'' that will be contained in a PS order, so there is no need to modify § 822.5.

(Comment 7) One comment objected to the application of PS to in vitro diagnostic (IVD) biologics, stating that these devices are already under PS, including lot release, reporting changes, and reporting errors.

We acknowledge that there are other PS requirements for IVD biologics, and it is not intended that PS duplicate or supersede any existing requirements. We would take these existing requirements into consideration when evaluating whether and what form of PS is the appropriate mechanism for addressing the PS question.

(Comment 8) Several comments stated that FDA should be required to meet with manufacturers prior to issuing a PS order, to discuss whether PS is necessary or whether our concerns could be addressed by other, less burdensome mechanisms.

As noted in the preamble to the proposed rule, we anticipate meeting with the affected manufacturer(s) prior to issuing a surveillance order for a particular device for the first time. A requirement that we meet with affected manufacturers prior to issuing subsequent orders for the same device would be burdensome for manufacturers as well as for FDA. We are, therefore, retaining the flexibility to issue PS orders without first meeting with the affected manufacturer(s).

(Comment 9) Several comments urged FDA to modify the rule or issue guidance to advise manufacturers as to what sort of devices may be subject to PS. Knowledge of PS requirements would be an important consideration for a manufacturer contemplating entering a specific market. It was also suggested that we maintain an Internet Web page that lists devices for which PS has been ordered.

We acknowledge that the possibility that PS may be required for a particular device may influence a manufacturer's decision to enter a particular market. There are, currently, few devices subject to PS. We cannot predict which specific devices may be subject to PS in the future. A PS order is issued to address a specific PS question, which may surface at any time in the device's life cycle. The guidance document entitled ''Criteria and Approaches for Postmarket Surveillance'' discusses the criteria we will use to determine whether to impose PS. We will publish a list of devices subject to PS and make it available through the Internet and Facts-on-Demand.

D. Postmarket Surveillance Plan

(Comment 10) We received several comments that questioned whether domestic manufacturers of devices for export only should be subject to PS. These devices cannot be marketed in the United States and it is illogical to impose PS on these products.

We agree. Devices manufactured for export only, in compliance with section 801(e) of the act (21 U.S.C. 381(e)), are subject to the requirements of the importing country and will not be subject to PS under this rule.

(Comment 11) We received two comments that we should modify the rule to utilize a ''two-tier'' system for PS. The first tier would involve the manufacturer collecting information regarding significant complications, using selected centers and clinical report forms. If the first tier resulted in identification of a specific question, i.e., unexpected serious illness, the second tier would involve a more in-depth information collection. If no specific question were identified, PS would be considered complete.

We do not agree that a ''two-tier'' approach is more likely to generate useful information. The ''two-tier'' approach assumes no information is available regarding significant complications. We do not intend to impose PS unless we have identified a need for information or data. This need may be identified during the review of a marketing application or after the device has been marketed. For devices already on the market, PS may be ordered to collect information about an unanticipated adverse event. We believe that the ''two-tiered'' approach suggested by the comments would actually be more burdensome for manufacturers, since it would require data collection in the absence of a clearly defined need. We do agree that the results of a PS plan may, in some cases, raise new questions that may need to be addressed by a second PS plan. The rule, as written, allows for, but does not require, a two-tiered approach.

(Comment 12) We received two comments about the applicability of regulations concerning informed consent (part 50 (21 CFR part 50)) and institutional review boards (IRBs) (part 56 (21 CFR part 56)). They noted that PS is not within the scope of part 50 or part 56, and that only a very limited consent involving confidentiality of patient records is appropriate.

These comments agree with our statements in the preamble to the proposed rule. We agree that informed consent under part 50 and IRB review under part 56 are not applicable to many PS plans. However, there are surveillance plan designs, e.g., a prospective, clinically-based data collection, under which some or all of the provisions of parts 50 and 56 would be appropriate. Other designs, e.g., a registry maintained by a manufacturer, may require modification to the patient consent form to indicate that data may be provided to FDA. We do not require, nor do we generally expect, PS to result in the collection of personal identifiers. In any PS plan, we expect the manufacturer to ensure that the

surveillance approach used incorporates whatever measures are necessary to protect patient privacy. We will ensure that the appropriate patient protection measures are in place through the review and approval of each PS plan.

(Comment 13) One comment requested clarification of our requirement (§ 822.9(a)(8)) that the PS plan include the indications for use and claims for the device. The comment asked if we intended for the manufacturer to submit copies of all labeling and promotional materials for the device.

We do not expect copies of all labeling and promotional material to be included in the submission. This information may be incorporated by reference to another submission, including a marketing application. In general, you may submit a statement of any claims that are relevant to the performance of the device, rather than copies of promotional materials.

(Comment 14) One comment stated that the incorporation of guidance as substance in § 822.12 violated notice and comment requirements.

We do not agree that § 822.12 incorporates guidance as substance. This section of the proposed rule referred the reader to two current guidance documents in response to the question, ''Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?'' Guidance documents represent the agency's current interpretation of, or policy on, a regulatory issue. They do not establish legally enforceable rights or responsibilities and do not legally bind the public or FDA. You may choose to use an approach other than the one set forth in a guidance document, as long as your alternative approach complies with the relevant statutes and regulations.

Nonetheless, to avoid confusion and to ensure that the regulations do not become outdated should the agency revise its guidance documents, we have revised § 822.12 and other references to guidance documents in the regulations to alert the reader to the availability of guidance generally, and have clarified the role of guidance documents in relation to specific regulatory and statutory requirements.

E. FDA Review and Action

(Comment 15) Two comments asked that we identify the criteria we will use for evaluating PS plans and define the term ''scientific soundness.''

The regulation states that, among other things, we will evaluate whether the PS plan is likely to provide useful information that will address the PS question. Specific criteria will depend on the surveillance question and the approach used. We intend to provide the affected manufacturer(s) with as much guidance as possible and we expect the review of a PS plan to be interactive. ''Scientific soundness'' indicates that a plan was developed using scientific principles. We expect a clearly defined hypothesis and a plan that can reasonably be expected to develop data that will address the hypothesis.

(Comment 16) Two comments objected to the requirement that any changes to an approved PS plan be submitted to and approved by us prior to making the change. The comments suggested that we should only require prior submission and approval of ''significant'' changes, i.e., those that would affect the nature of data collected in accordance with the plan.

We agree. We have modified § 822.21 to indicate that only changes that will affect the nature or validity of data collected in accordance with the plan require prior approval. Such changes are those for which a revised surveillance plan will be needed, and we have modified the section to clarify this, as well as to emphasize that in preparing the revised plan, you may reference information submitted in your approved surveillance plan or other submissions, in accordance with § 822.14. Changes that will not affect the nature or validity of data collected in accordance with the plan must be reported in the next interim report required by your approval order. No revised surveillance plan is needed for such changes.

We have altered § 822.21 to clarify the number of copies of a change request that should be submitted, and the address to which they should be sent.

(Comment 17) One comment suggested that the language concerning confidentiality in § 822.23 was not clear and that it should be revised to indicate that we will not disclose the contents of a submission before the plan is approved and that we will not disclose confidential information.

We agree and have revised § 822.23 accordingly.

(Comment 18) Two comments objected to the disclosure of PS plans, amendments, supplements, and reports under the Freedom of Information Act (FOIA) once the PS plan is approved. Both comments stated that the contents of the submissions should be confidential until the manufacturer's final report is submitted. Early disclosure could provide competitors with commercially sensitive information.

Under FOIA, we have no basis for continuing to hold a PS plan confidential in its entirety once it has been approved. As noted in the rule, the submission will remain confidential until the plan is approved, and we will continue to protect the confidentiality of trade secret or confidential commercial information, or information identifying patients.

F. Records and Reports

(Comment 19) Two comments suggested that PS program inspections be subject to FDA's ''Preannounced Inspection Policy.''

Policies and procedures concerning the planning and conduct of inspections are not within the scope of this regulation. We believe that PS program inspections should be conducted in accordance with policies and procedures in place at the time of the inspection.

(Comment 20) One comment stated that the reporting requirements are not authorized by the PS provisions in the act and that they are unduly burdensome, in contravention of section 519(a)(4) of the act (21 U.S.C. 360i(a)(4)).

We do not agree. We have ample authority to establish these requirements. These PS regulations are authorized under section 701(a) of the act (21 U.S.C. 371(a)) because they establish recordkeeping and reporting requirements that are necessary for FDA to verify that devices comply with PS orders issued under section 522 of the act. As explained in the preamble to our proposed regulation, these regulations are also authorized by section 519 of the act, which permits FDA to establish by regulation reporting requirements necessary to assure that a device is not misbranded, because a device that does not comply with a section 522 of the act PS plan is misbranded under section 502(t) of the act (21 U.S.C. 352(t)). In light of the public health benefits achieved by compliance with PS orders, these recordkeeping and reporting requirements are not unduly burdensome. Our analyses under the Paperwork Reduction Act of 1995 (the PRA) and of the economic impact address the annual recordkeeping and reporting burdens imposed by these regulations in detail and demonstrate that they are not unduly burdensome.

G. Economic Impact

(Comment 21) One comment objected to the idea that manufacturers would conduct PS plans involving 30,000 subjects, stating that our concept of PS is unrealistic.

We agree that a PS plan calling for 30,000 observations is unrealistic. It was not our intent to suggest that PS plans of this size would be required; instead the example demonstrates that PS to detect very rare events would be impractical, if not impossible.

(Comment 22) One comment argued that we do not have the authority to require clinical studies.

We do not agree. As discussed under section II.B of this document, ''General Comments,'' we do not believe that the statutory language precludes us from ordering PS that involves clinical data collection. We do not anticipate that clinical studies will be required for a significant number of PS plans. The estimates used in section II.G of this document, ''Economic Impact'' are intended to yield an over-estimate of the cost of PS.

(Comment 23) One comment stated that, while the guidance document entitled ''Criteria and Approaches for Postmarket Surveillance'' provides some examples, more specificity is needed for determining when different types of data collection might be used.

We agree that a clear understanding of the type of data collection appropriate for PS would be useful to a prospective manufacturer of a device. While this information may be available for a device already subject to PS, we cannot predict what surveillance questions may arise in the future and therefore cannot identify what type of data collection would be most appropriate to address the surveillance question. As we gain more experience with PS under section 522 of the act, we may be able to provide additional guidance.

(Comment 24) One comment objected to an estimated cost of $324,000 for a plan requiring primary data collection, believing that the cost would be significantly higher. The comment asks that we clarify how we arrived at the various cost estimates.

We acknowledge that precise costs may vary by specific PS order, but believe the costs are reasonable representations of typical clinical data collection efforts. As detailed for the proposed rule, we have attempted to provide reasonable descriptions of cost elements for a 36-month investigation. We have not received any data that refute the cost estimates.

(Comment 25) One comment questioned the identification of the categories of devices that are likely to be affected by the rule.

The categories[1] used in the Small Business and Regulatory Flexibility analyses are those used by the Census Bureau. While these categories do not coincide with either the class or medical specialty designations that we use to classify devices, they do include the majority of medical device manufacturers. These categories were used to estimate the proportion of medical device manufacturers that would be designated ''small businesses.'' Although the percentages varied slightly, the business size for all of the categories cited was overwhelmingly ''small.'' Therefore, the economic analysis assumed that the majority of manufacturers affected by this regulation would be considered ''small businesses.''

H. Paperwork Reduction Act

(Comment 26) Two comments noted that the collection of information is unnecessary for devices manufactured for export only and for minor changes to an approved PS plan.

We agree, and have modified the regulation accordingly, as noted under ''Postmarket Surveillance Plan'' (devices for export only) and ''FDA Review and Action'' (changes to approved PS plan).

(Comment 27) Two comments contained suggestions to enhance the quality, utility, and clarity of information collected under the PS rule.

The first suggestion, that we be required to meet with the affected manufacturer(s) prior to issuing a PS order, is discussed in section II.C of this document, ''Notification.'' The second suggestion, that we provide more guidance as to what we expect in a PS plan and the criteria that will be used in evaluating the plan, has been addressed in section II.E of this document, ''FDA Review and Action.''

III. What is the Economic Impact of This Regulation?

A. Introduction

We have examined the impact of the regulations under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Executive Order 12866 directs us to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. This final rule, however, is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule is likely to have potential significant impacts on substantial numbers of small entities. We have included a Final Regulatory Flexibility Analysis at the end of this section. Finally, this regulation will not impose costs of $100 million or more in any one year on either the private sector or State, local, and tribal governments in the aggregate, and therefore we are not required to prepare a summary statement of analysis under section 202(a) of UMRA.

B. Objective of the Regulation

The objective of the regulation is to enhance the public health by reducing the incidence of medical device adverse experiences. The primary problem is that we currently lack data that may reveal unforeseen adverse events relevant to the safety and effectiveness of specific devices. The regulation will address this concern by implementing section 522 of the act, as amended by FDAMA to require manufacturers of specific medical devices to conduct PS. We expect PS to identify uncommon, but potentially serious, device-related adverse outcomes that were not noted during premarket development, or were noted as a continuing concern but did not warrant withholding the device from the market.

C. Risk Assessment/Baseline Conditions

In the absence of the regulation, neither FDA nor device manufacturers will have complete confidence that uncommon and unforeseen events have been adequately identified for marketed devices. Currently, hundreds of medical devices are marketed each year that either: (1) Are intended to be implanted in the human body for more than 1 year; (2) are life-sustaining or life-supporting and used outside a device user facility; or (3) for which failure could be reasonably likely to have serious adverse health consequences. Devices with these characteristics range from implantable pacemaker pulse generators and vascular graft prostheses to dental and orthopedic implants.

[1]The categories and percentages have been updated in this final rule to indicate more recent data for the current classification system used by the Census Bureau, the North American Industries Codes (NAIC). The slight changes in the categories and numbers do not affect our conclusion that the majority of device manufacturers likely to be affected by this rule are small entities.

Our decision to approve or clear a particular device for marketing is based on a comparison of the expected health benefits of the device to the expected risk of adverse outcomes due to device failure. Premarket clinical studies, however, are typically designed to detect only relatively frequent adverse events. As a result, we often base premarket approval decisions on risk/benefit relationships that include only relatively frequent risks. Given this lack of complete data, neither FDA nor device manufacturers can be confident about the likelihood of serious, but infrequent, adverse events. Such events can have drastic consequences for dozens, if not hundreds, of patients when a device is marketed to thousands of patients. Postmarket surveillance provides a mechanism for gaining an early awareness and better understanding of such relatively rare events, thus preventing further unnecessary risk to patients. Surveillance may identify actions that minimize risks, such as training, labeling, design modification, or patient selection criteria. In extreme cases, surveillance may show that the subject device should be removed from the market.

D. Costs of Postmarket Surveillance

A critical cost factor is the size of the expected surveillance. Although SMDA granted us the authority to require surveillance, and FDAMA maintained it, there is currently no specific mechanism for conducting this surveillance. We have approved some surveillance protocols under SMDA, but rescinded most of these upon passage of FDAMA. While we cannot be precise, we estimate, based on a review of currently marketed devices, that an average of six generic device types, each with an average of five manufacturers, may be the subject of PS orders each year. This frequency would result in the initiation of 30 PS orders each year. Assuming that the duration of each PS is limited to 3 years, at any given time, 90 PS studies could be ongoing and subject to FDA review. An additional 30 PS would be in preliminary, design stages.

The surveillance becomes larger and more extensive as the acceptable rate of adverse events becomes smaller. Statisticians explain that if one assumes a cumulative Poisson distribution, a 0.95 probability of noting an adverse event with the incidence rate of (p) implies that the product of p and the number of observations (n) must approximately equal 3 (i.e., pn=3). For example, the surveillance must include about 30,000 observations to be 95 percent confident that a PS will detect events that occur at a frequency of 0.0001 (one event in 10,000 patients). The PS designed to detect more frequent events requires fewer observations. The surveillance must include about 1,800 observations to be 95 percent confident that PS will detect events that occur at a frequency of 0.002 (two events in 1,000 patients). We, along with device manufacturers, will need to take these considerations into account when designing PS plans.

The manufacturer would generally complete the required PS within 36 months, with at least semiannual observations. (PS utilizing literature searches may require monthly searches, although less frequent reviews may be appropriate at times.) These observations would be collected by either primary data collection from controlled clinical studies, secondary data collected from other databases or sources (such as Medicare databases, registries or tracking systems, and other types of studies), or published studies in the medical literature as supplemented by our current reporting systems. For purposes of this analysis, we estimate that 10 percent of the PS will require primary data collection, 50 percent may utilize secondary data sources, and 40 percent may collect adequate data from published reports. Manufacturers will incur varying costs for both design and analysis/reporting/recordkeeping phases of each surveillance in addition to the costs of data collection. In addition, we will incur costs to review the data submitted by manufacturers.

1. Design Costs

We would expect the manufacturer of each device that is subject to a PS order to develop an analysis plan for implementing the data collection. We would review and approve this plan prior to initiation. The design of a PS utilizing primary data collection would require more resources than either secondary collection or literature searches. Senior industry regulatory staff would review and approve each type of PS, however, before submission to us. For this estimate, we have assumed that the design of PS utilizing primary data collection would require 3 weeks of industry staff time, PS utilizing secondary data sources would require 2 weeks of time, and PS utilizing published literature would require only 1 staff-week. According to the BLS, in 1997 the median weekly rate of compensation for managerial and professional personnel in this industry group (NAIC339112) was approximately $1,300. We have assumed an additional cost of $700 per week to account for administrative and clerical resources for a total estimate of industry resources at $2,000 per week. Therefore, the design of PS utilizing primary data collection would equal $6,000, PS utilizing secondary data collection would equal $4,000, and PS utilizing only a literature search would equal $2,000. These costs would occur prior to the first year of surveillance for each study.

2. Costs of Data Collection

a. *Costs for primary data collection.* Primary data collection utilizing clinical trials will generally be impractical because of difficulties obtaining patient and clinician participation. In addition, this type of data collection would have significant resource requirements. Primary data could, however, be used to survey smaller populations, or populations that could experience relatively high rates of adverse events. For this analysis, we have assumed that a rigorous PS plan might call for observing 300 subjects semiannually over a 3-year period. This plan would generate 1,800 total observations and might be confidently expected to identify adverse events that occur with a frequency of 0.002, or 2 per 1,000. Moreover, patient dropouts would occur and some observations would not result in usable data, raising the number of required subjects to perhaps 350. Physicians would examine patients and provide the results of these required observations directly to manufacturers.

The costs of this data collection would be significant. While in most cases, we would not require additional procedures or tests for a patient, it is possible that some extra examinations would be required to ensure that the patient's device was still functional. In addition, normal physiologic data would likely be consistently recorded, submitted to the device manufacturers, and archived for further review. Based on the experience of the National Cancer Institute in administering grants for similar research the typical cost per clinical observation to collect patient data is approximately $150. Therefore, the cost of collecting these data would equal $300 per patient per year, or $105,000 per year. The present value of the costs of collecting these primary data over a 3-year period (using a 7 percent discount rate) is $276,000 per PS.

In addition, the patient/subject is likely to incur opportunity costs associated with being part of PS clinical studies. Because the ultimate purpose of the PS is to continue marketing the device, the patient is likely to incur such opportunity costs for procedures and tests that provide him or her no direct benefit. We have estimated that PS clinical studies may require

approximately 1 hour of patient time (including travel). Assuming that the opportunity cost of patients is approximately $26 per hour, the annual cost to patients of lost opportunity for PS utilizing primary data is $18,200 per year. The present value of the costs of 3 years of data collection (at 7 percent discount rate) is $48,000.

We therefore estimate the total present value of the costs for primary data collection to be $324,000 per PS study.

b. *Costs for secondary data collection.* The use of secondary data for PS would not be as costly as the use of primary data. Manufacturers may obtain secondary data sets from both public and private sources, depending on the nature of the surveillance. Based on typical costs we have experienced for acquisition of similar databases, we estimate that these data would cost approximately $50,000 per year to obtain and maintain for each surveillance. These data would include sufficient observations to assure that infrequent events would be identified, but the expected frequency level may vary by device and patient characteristics. The present value of the costs of using secondary data sources for PS (at a 7 percent discount rate for 3 years) is $131,000.

c. *Costs of conducting literature searches.* We believe that PS utilizing reviews of published literature and analyses of our current reporting system may require monthly collections, although less frequent reviews may be acceptable for some surveillances. As a rule, we assume that a professional employee would take approximately 3 days per month to assess published accounts and ensure that any useful data are considered. As stated earlier, the median compensation rate for professional employees in this industry was approximately $1,300 in 1997. This implies that the cost of reviewing published literature would equal $780 per month for professional staff resources. Administrative and clerical support would likely add an additional $420 per month for a total cost of $1,200. Annual costs for conducting this type of PS would equal $14,400, and at a 7 percent discount rate for 3 years, the present value of the costs of this data collection equals $38,000.

3. Costs of Data Analysis, Reporting and Recordkeeping

PS is likely to entail the preparation and submission of four reports during the course of all types of surveillance: An initial report at the outset, two annual interim reports, and a final report including data analysis. In addition, manufacturers will be required to keep data available for 2 years. We assume that this category of costs is likely to be equivalent for each type of PS.

The initial and interim progress reports are expected to be relatively brief. We expect that each report would require only 1 resource-week of supported professional time to be completed for a cost of $2,000 per report. The final data analysis and report would be much more extensive, and could require up to 3 months of resources to complete (statistical, medical research, legal, and senior regulatory affairs staff would likely all have input to final reports). The estimated cost of preparing and submitting a final PS report is $26,000.

We estimate that the total cost of maintaining records for 2 years after completion of the surveillance will equal $500 per year. The present value of these reporting/recordkeeping costs (at a 7 percent discount rate) equals $28,000 per surveillance.

4. Total Private Costs of Postmarket Surveillance

The annual cost for the conduct of PS is the sum of the present value of the costs of the expected studies. Each PS requiring primary data collection has a present value cost of $358,000 ($6,000 for design, $324,000 for data collection (including $48,000 of patient opportunity cost), and $28,000 for reports and recordkeeping). Each PS requiring secondary data collection has a present value cost of $163,000 ($4,000 for design, $131,000 for data collection, and $28,000 for reports and recordkeeping). Each PS requiring literature searches has a present value cost of $68,000 ($2,000 for design, $38,000 for data collection, and $28,000 for reports and recordkeeping).

We expect to issue 30 PS orders each year. We expect that 10 percent (3 PS') of these will require primary data collection. The present value of the costs for these surveillances is $1.1 million. We expect that 50 percent (15 PS') of the 30 PS orders will use secondary data collection. The present value of the costs for these surveillances is $2.4 million. The remaining 40 percent of annual PS orders (12 PS') will use literature searches. The present value of the costs for these surveillances is $0.8 million. Since we expect to issue only 30 surveillance orders each year, the annual cost to industry of this regulation is the sum of the present value costs, or $4.3 million.

5. Costs to FDA for Oversight and Review

We expect that 120 reports will be submitted each year as a result of this regulation (30 initial reports, 60 interim progress reports, and 30 final data analyses). If each report, on average, required 2 weeks of review time, we will need five additional review full-time employee (FTE) resources to oversee the program. In addition, we would require an additional 2.5 FTE's in support and management resources. We have estimated that the loaded cost of each FTE is approximately $117,300. Therefore, the annual cost to FDA of maintaining PS is estimated to equal $0.9 million per year.

6. Total Annual Costs of Postmarket Surveillance

We estimate that the total annual cost for operating and maintaining a PS program is $5.2 million. Most of these costs ($4.3 million) are direct costs to manufacturers while $0.9 million are our costs of operating the program.

E. Benefits of the Regulation

The expected benefit of the regulation is the reduction in avoidable adverse events attributable to the early detection of potential problems. Possible outcomes of PS include withdrawal of the device from the market, changes in labeling, changes in user training, modification of the device design, or (most likely) assurance that the device does not pose an unreasonable risk to the public health. These benefits are not easily quantified because they would vary by device; but the greatest benefit would be realized when other regulatory safeguards, such as early warning through the MDR system or preproduction design controls, fail to detect and resolve serious problems. To illustrate the potential benefits of PS, we reviewed our historical records to identify and quantify the benefits of a major adverse event that could reasonably have been mitigated if this regulation had been in place.

1. Chronology of Historical Event

A particular type of implanted heart valve was approved and quickly accepted for patient use in 1979, because of its ability to reduce the risk of blood clots in patients. The premarket decision to approve the device considered clinical data that included an observation of one failure. The device was marketed for 8 years and implanted a total of 82,000 times. By 1999, there were 462 device failures and 300 resultant fatalities.

During the first marketing year, 5,000 patients received the device and 2 devices failed. During the second year, an additional 11,000 devices were implanted and 3 devices failed. During the third year, 14,000 devices were implanted and 7 devices failed. At this point of marketing, a total of 30,000 devices had been implanted and 12 had

failed. No failures were reported in other similar devices marketed during this period.

We believe that had PS been in effect at that time, we would have likely made this device subject to a PS order because of the noted premarket strut failure. In general, any failure to any heart valve would be deemed serious and potentially catastrophic. We would have been concerned about the occurrence of a strut failure during premarket testing. While this concern would not have delayed marketing approval, subsequent strut failures would have been sufficient to start the PS mechanism, if it had been available. A likely surveillance plan would have required the manufacturer to determine the frequency of strut failures and identify contributing causes. Such a plan would have likely detected problems with the device by the end of the third year; potentially avoiding a total of 52,000 implants (82,000 - 30,000). Given the substantial number of patients implanted and the relatively low failure rate for the number of semi-annual patient observations after three years (12 ÷ 102,000 = .0001), it is unlikely that the required PS would have involved the collection of primary data through prospective trials. Nevertheless, by analyzing their respective failure rates by using patient registries that would include all implanted devices, the manufacturer would have noted all complications and failures. Close attention would have been paid to all adverse events (both expected and unexpected), with special attention being paid to strut fractures, early valve replacement, and deaths. Because all patients and all implants would have been entered into this registry, each occurrence of valve fracture would have been noted, and this information would have been used to determine the best course of action to protect the public health. In this case, it is likely that no valves would have been implanted in patients after the third year of marketing.

2. PS and Risk Reduction

If PS prevented 63 percent of the actual implants (52,000/82,000), then it is likely that about 63 percent of the device failures could also have been avoided. As of 1999, the device has failed 462 times. Consequently, if the device had been removed from the market after its third year, about 293 failures would have been avoided over an 18-year period (1981 to 1999). Moreover, the 65 percent fatality rate for failures implies that the 190 fatalities associated with these 293 failures would have been avoided.

3. Value of Avoided Mortality

There are no precise methodologies for estimating the value of preventing human fatalities. Economists, however, have attempted to place a dollar value on the avoidance of fatal risks based on society's implicit willingness to pay to avoid such risks. Currently, the literature shows that $5 million may represent an approximate value of society's willingness to pay to avoid a statistical fatality. This value is reduced by an appropriate discount factor, however, to the extent that the averted fatalities would occur in future time periods.

4. Frequency of Adverse Events

To develop a possible scenario of future benefits we have assumed that, once within the next 25 years, the rule would prevent an event with characteristics identical to the heart valve incident discussed above. We cannot predict the precise year of the expected future event, but based on the past pattern of device failures, if the regulation identified a device with the described failure characteristics in the first year after completion of the first surveillance group (actually the fourth year of implementation), the current present value dollar benefit (assuming a 7 percent interest rate) of the avoided fatalities would be $405.5 million. If PS identified a potential device failure during the 10^{th} project year, the present value of the dollar benefits for that event would be $270.2 million. If the device failure were not identified until the 25th year, the present value of the monetized benefits would be $97.9 million. Because we assume that, in the absence of this rule, the device failure would occur only once during the next 25 years, the likelihood of an initial failure in any one future year is only .04. Thus, we estimate the overall expected present value of avoiding such a future device failure at $192.0 million.

However, PS is not expected to be infallible. We have estimated that typical PS design will provide a 95 percent confidence that infrequent adverse events will be identified. Therefore, we would expect to identify potential device failures such as described 95 percent of the time. To account for this, the present value of avoiding future device failures attributable to this regulation is expected to equal 95 percent of the total amount, or $182.4 million.

5. Annual Benefits of the Regulation

In the illustrative case described above, we have amortized society's willingness to pay to avoid these fatalities over the evaluation period. This is because the costs of PS are on-going and would be expended each year whether a device failure occurred or not. The current net value of avoiding these fatalities ($182.4 million), when amortized over 25 years, using a 7 percent discount rate, will result in average annualized benefits of $15.7 million.

Of course, we believe the regulations will result in other benefits, such as reductions in psychological stress and worry associated with device failures and the avoidance of morbidities or medical procedures required by non-fatal results of device failure. These benefits may be somewhat offset by the loss of the original therapeutic benefit provided by the device for patients who do not experience an adverse event.

F. Annual Costs and Benefits of the Regulation

We have estimated the annual costs of PS to equal $5.2 million. We estimated benefits based on the avoidance over the next 25 years of just one serious event to equal $15.7 million per year.

G. Small Business Analysis/Regulatory Flexibility Analysis

We believe that it is possible that the regulation will have a significant impact on a substantial number of small entities and have conducted a regulatory flexibility analysis. This analysis is intended to assess the impact of the rule on small entities and to alert any potentially impacted entities of the expected impact. We requested that such entities review the rule and submit comments to us, and we have responded to these comments in section II.G of this document.

1. Description of Impact

The objective of the regulation is to reduce the number of adverse events associated with failure of medical devices by implementing section 522 of the act, as amended by FDAMA, to require PS of specific devices. This surveillance will be designed to identify, as early as possible, potentially dangerous but rare events that could endanger public health. Our statutory authority for the rulemaking is discussed earlier in this preamble.

This regulation affects manufacturers of: (1) Devices for which failure would be reasonably likely to have severe health consequences; (2) devices to be implanted in a human body for more than 1 year; and (3) devices that are life sustaining or supporting and are used outside a device user facility regardless of size, because PS will likely be required for some of their currently marketed and new devices. There are four industries[2] affected by the

[2]The categories that we use in the Small Business and Regulatory Flexibility analyses are those used

regulations: Surgical and Medical Instrument Manufacturing (NAIC 339112), Dental Equipment and Supplies Manufacturing (NAIC 339114), Ophthalmic Goods Manufacturing (NAIC 339115), and Surgical Appliances and Supplies Manufacturing (NAIC 339113). Manufacturers in these industries are highly specialized, with between 93 and 98 percent of establishment sales within the affected industries. In addition, between 93 and 98 percent of medical, dental, and ophthalmic products are supplied by establishments within these industries.

For each of these four industries, the Small Business Administration classifies as small any entity with 500 or fewer employees. Under this definition, 95 percent of the manufacturers within these industry groups are small businesses, and account for approximately 65 percent of the value of the shipments for the affected industries. Over 68 percent of the establishments in these four industries have 20 or fewer employees and the companies have an average of 1.08 establishments per company. The average company in these industries has about $7.5 million in annual revenues and about 60 employees. Consequently, there is a high likelihood that manufacturers of some of the devices that would be subject to this regulation will be small entities.

Based on the cost assumptions described above, any company conducting PS with primary data collection would expend 4.3 percent of annual revenues. Secondary data collection would cost an average company 2.2 percent of annual revenues. (Literature searches are not expected to impose significant costs.) Since 60 percent of the expected PS orders would require significant outlays, we believe that a substantial number of small entities would be significantly affected.

Any PS effort would require professional resources. Primary data collection would require clinical researchers, data analysts, and legal staff. Other PS would require data analysts and support. Manufacturers of devices likely to be subject to PS orders would be familiar with data analysis and the clinical community because of their pre- and postmarket experience. They would therefore have access to the professional skills needed to conduct PS.

2. Analysis of Alternatives

We examined and rejected the following alternatives to the rule: (1) No action; (2) reliance on premarket approval application (PMA) annual reports; (3) increased use of PMA postapproval studies; (4) reliance on MDR reports; (5) increased educational effort to improve all reporting mechanisms; and (6) exempting small manufacturers from PS requirements. We have rejected these alternatives at this time for the following reasons:

Alternative 1

Other sources of postmarket data or information exist, including PMA annual reports and other mechanisms. However, these sources are not always adequate to address specific postmarket issues that arise for specific devices. The regulation is intended to identify sources of information available to the agency and determine their ability to address the postmarket issue prior to issuing a PS order. We would be able to meet with the affected industry sector to determine what information is currently available and whether that information may be modified to answer specific public health questions. Reliance on the current sources of postmarket data would not efficiently meet the objective of reducing avoidable adverse events.

Alternative 2

We considered increasing the requirements for data submission in PMA annual reports. This alternative was rejected because not all devices that meet the PS criteria are subject to PMA annual reports, and annual reports would not be specific enough to address issues for each type of device. In addition, the costs of requiring detailed data submissions for all affected devices would be extremely high. We rejected this alternative.

Alternative 3

If we increased postapproval studies, the expected compliance costs would be much greater, since postapproval studies generally consist of primary data collection. If a postmarket issue is identifiable at the time of approval, postapproval studies could be designed to collect meaningful data. However, if an issue would arise after FDA approval, this mechanism would not be helpful in meeting the objectives of the regulation. In addition, since all class II devices are marketed through premarket notification procedures, postapproval studies are not an option for those devices. We rejected this alternative.

Alternative 4

We rejected the alternative of relying on an enhanced MDR system. While MDRs are extremely important in assessing public health, it is a passive system of data collection in that it relies on reports from concerned professionals who become aware of device problems to manufacturers or their representatives. While manufacturers must report these adverse events, they are not required to actively go out and look for problems with their devices under the MDR provisions. Often MDR reports are not specific enough to address discrete issues. We believe that the public health objectives are clearly met by requiring more active data collection and analysis by the responsible manufacturers of devices.

Alternative 5

FDA did not select the alternative of increased education in lieu of PS because any educational effort would require that FDA have sufficient information. Surveillance would be ordered to collect information that might lead to educational efforts to correct any noted problem. Thus, FDA did not believe that education alone would reduce adverse events.

Alternative 6

We rejected the alternative of exempting small device manufacturers from the requirements. We recognize that an order to conduct surveillance would likely cause a significant impact on a small entity. However, unless and until a PS order affecting a device that it manufactures is issued, this regulation creates no impact on a manufacturer regardless of size. Section 522 of the act, which this regulation implements, is intended to protect the health by authorizing PS orders to be issued for devices meeting statutory criteria when there is a question indicating a potential public health risk, regardless of who manufactures the device. Because devices manufactured by small entities could pose a public health risk meeting the statutory criteria for imposing PS as easily as could devices manufactured by large entities, and because FDA cannot predict who will manufacture devices meriting PS in the future, exempting all small manufacturers from this rule is not consistent with the objectives of the underlying statute. This is particularly clear because, as stated earlier, 95 percent of the manufacturers in the affected industries are considered small business entities, and these small entities account for approximately 65 percent of the aggregate value of shipments in their industries. Consequently, exempting small entities from the rule could reduce the effectiveness of the rule by 65 percent or more.

3. Ensuring Small Entity Participation in Rulemaking

by the Census Bureau. Since the publication of the proposed rule, the Census Bureau has modified their categorization and coding scheme. These changes did not affect the types of manufacturers that we anticipate may be subject to PS, nor did they affect our conclusion that the majority of medical device manufacturers would be considered small entities.

We believe it is possible that this rulemaking could have a significant impact on a substantial number of small entities. The impact would include the costs of conducting PS for specific devices. The proposed regulation was available on our Web site (www.fda.gov), and we announced the availability of the proposed regulation, requesting comments, at several meetings at which members of the affected industries were present. We solicited comments from affected entities to ensure this impact was analyzed. We received one comment questioning the identification of the affected entities impacted by the rule (comment 25 of this document). As noted in response to that comment, these categories were used to estimate the proportion of medical device manufacturers that would be designated ''small businesses.'' Although the percentages varied slightly, the business size for all of the categories cited was overwhelmingly ''small.'' Therefore, the economic analysis assumed that the majority of manufacturers affected by this regulation would be considered ''small businesses.''

H. Conclusions

We have examined the impacts of the regulation implementing PS for specific medical devices. Based on these estimates, the average annual quantified benefits ($15.7) million exceed the average annualized costs of conducting surveillance ($5.2 million). In addition, we expect that between 3 and 4 statistical fatalities will be avoided each year because of this regulation.

We have examined the impacts of the regulation and have concluded that it is likely that a substantial number of small entities will be significantly impacted.

IV. How Does This Regulation Comply With the Paperwork Reduction Act of 1995?

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the PRA of 1995 (44 U.S.C. chapter 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Postmarket Surveillance Recordkeeping and Reporting Requirements for Manufacturers of Class II and Class III Devices[3]

Description: This final rule implements the PS provisions of section 522(a) of the act, as added to the act by SMDA and amended by the FDAMA (Public Law 105–115). The reporting and recordkeeping provisions of the rule implement the collection of useful data or other information necessary to protect the public health and to provide safety and effectiveness information about the device. The final rule applies to manufacturers of class II and class III devices who have received an order to conduct PS of a particular device. These device manufacturers must develop and submit for FDA approval a plan for PS designed to answer the question(s) posed in FDA's order. As they conduct this surveillance, manufacturers must maintain records of the surveillance and submit interim and final reports to FDA.

Description of Respondents: Manufacturers of class II or class III devices that have received an order to conduct PS from FDA.

FDA received several comments on the collection of information described in the proposed rule. Two comments noted that the collection of information is unnecessary for devices manufactured for export only and for minor changes to an approved PS plan. We agree, and have modified the regulation accordingly, as noted under ''Postmarket Surveillance Plan'' (devices for export only) and ''FDA Review and Action'' (changes to approved PS plan).

Two comments contained suggestions to enhance the quality, utility, and clarity of information collected under the PS rule. The first suggestion, that we be required to meet with the affected manufacturer(s) prior to issuing a PS order, is discussed in section II.C of this document, ''Notification.'' The second suggestion, that we provide more guidance as to what we expect in a PS plan and the criteria that will be used in evaluating the plan, has been addressed in section II.E of this document, ''FDA Review and Action.''

The FDA has had limited experience with PS under SMDA, and FDAMA significantly modified the provisions of section 522 of the act. Based on current staffing and resources, we anticipate that we will issue PS orders for six generic devices each year, each manufactured by an average of five manufacturers. Therefore, 3 years after implementation, we would expect that the recordkeeping requirements would apply to a maximum of 90 manufacturers (30 added each year) and 270 investigators (3 per surveillance plan). After 3 years, we would expect these numbers to remain level as the surveillance plans conducted under the earliest orders reach completion and new orders are issued. Each manufacturer will be required to submit a PS plan (§§ 822.9 and 822.10) and interim and final reports on the progress of the surveillance (§ 822.38). We anticipate that a small number of respondents will propose changes to their PS plans (§ 822.21), request a waiver of a specific requirement of this regulation (§ 822.29), or request exemption from the requirement to conduct PS of their device (§ 822.30). Our experience has shown that a few respondents will go out of business (§ 822.27) or cease marketing the device subject to PS (§ 822.28) each year. In addition, manufacturers must certify transfer of records when a sponsor or investigator changes (§ 822.34). We anticipate that this will apply to a small number of respondents. We expect that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, we have assumed that each PS order can only be satisfied by a 3-year clinically-based surveillance plan, using three investigators. These estimates are based on our knowledge and experience with limited implementation of section 522 under SMDA.

FDA estimates the burden for this collection of information as follows:

[3]FDA has changed the title from the PRA section of the proposed rule to more accurately describe the nature of the information collection provisions of the rule.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
822.9 and 822.10	30	1	30	120	3,600
822.21	4	1	4	40	160
822.27	1	1	1	8	8
822.28	3	1	3	40	120
822.29	5	1	5	40	200
822.30	1	1	1	120	120
822.34	5	1	5	20	100
822.38	90	2	180	80	14,400
Total					18,708

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
822.31	90	1	90	20	1,800
822.32	270	1	270	10	2,700
Total					4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As explained in section II.B, General Comments, under comment 16 of this preamble, the final version of § 822.21 differs from the proposed version of the rule. These changes do not materially alter the average burden of that rule and thus do not substantially modify the collection of information from the proposed version of that section (5 CFR 1320.5(g) and 1320.11(h)(2)). Requirements for manufacturers proposing major changes to approved plans remain substantially unchanged from those posed under the proposed rule, requiring an estimated 40 hours per response, but FDA has revised the burden chart to reflect the prediction that four manufacturers will annually propose such major changes, rather than the seven respondents predicted under the proposed rule. Under the final rule, manufacturers making minor changes must report their changes in the interim report required under § 822.38, and the burden of this requirement is reported and approved under that section.

Section 822.26 does not constitute information collection subject to review under the PRA because ''it entails no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument.'' (21 CFR 1320.3(h)(1).)

Individuals and organizations may submit comments on these burden estimates or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to the Office of Surveillance and Biometrics (HFZ–510), Attn: David L. Daly, 1350 Piccard Dr., Rockville, MD 20850.

The information collection requirements in this final rule have been approved under OMB control number 0910–0449. This approval expires November 30, 2003. 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.

List of Subjects in 21 CFR Part 822

Postmarket surveillance, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 822 is added to read as follows:

PART 822—POSTMARKET SURVEILLANCE

Subpart A—General Provisions

Sec.
822.1 What does this part cover?
822.2 What is the purpose of this part?
822.3 How do you define the terms used in this part?
822.4 Does this part apply to me?

Subpart B—Notification

822.5 How will I know if I must conduct postmarket surveillance?
822.6 When will you notify me that I am required to conduct postmarket surveillance?
822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

Subpart C—Postmarket Surveillance Plan

822.8 When, where, and how must I submit my postmarket surveillance plan?
822.9 What must I include in my submission?
822.10 What must I include in my surveillance plan?
822.11 What should I consider when designing my plan to conduct postmarket surveillance?
822.12 Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?
822.13 [Reserved]
822.14 May I reference information previously submitted instead of submitting it again?
822.15 How long must I conduct postmarket surveillance of my device?

Subpart D—FDA Review and Action

822.16 What will you consider in the review of my submission?
822.17 How long will your review of my submission take?
822.18 How will I be notified of your decision?
822.19 What kinds of decisions may you make?
822.20 What are the consequences if I fail to submit a postmarket surveillance plan, my plan is disapproved and I fail to submit a new plan, or I fail to conduct surveillance in accordance with my approved plan?
822.21 What must I do if I want to make changes to my postmarket

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

Subpart A—General Provisions

§ 822.1 What does this part cover?

This part implements section 522 of the Federal Food, Drug, and Cosmetic Act (the act) by providing procedures and requirements for postmarket surveillance of class II and class III devices that meet any of the following criteria:

(a) Failure of the device would be reasonably likely to have serious adverse health consequences;

(b) The device is intended to be implanted in the human body for more than 1 year; or

(c) The device is intended to be used outside a user facility to support or sustain life. If you fail to comply with requirements that we order under section 522 of the act and this part, your device is considered misbranded under section 502(t)(3) of the act and you are in violation of section 301(q)(1)(C) of the act.

§ 822.2 What is the purpose of this part?

The purpose of this part is to implement our postmarket surveillance authority to maximize the likelihood that postmarket surveillance plans will result in the collection of useful data. These data can reveal unforeseen adverse events, the actual rate of anticipated adverse events, or other information necessary to protect the public health.

§ 822.3 How do you define the terms used in this part?

Some of the terms we use in this part are specific to postmarket surveillance and reflect the language used in the statute (law). Other terms are more general and reflect our interpretation of the law. This section of the part defines the following terms:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, as amended.

(b) *Designated person* means the individual who conducts or supervises the conduct of your postmarket surveillance. If your postmarket surveillance plan includes a team of investigators, as defined below, the designated person is the responsible leader of that team.

(c) *Device failure* means a device does not perform or function as intended, and includes any deviation from the device's performance specifications or intended use.

(d) *General plan guidance* means agency guidance that provides information about the requirement to conduct postmarket surveillance, the submission of a plan to us for approval, the content of the submission, and the conduct and reporting requirements of the surveillance.

(e) *Investigator* means an individual who collects data or information in support of a postmarket surveillance plan.

(f) *Life-supporting or life-sustaining device used outside a device user facility* means that a device is essential to, or yields information essential to, the restoration or continuation of a bodily function important to the continuation of human life and is used outside a hospital, nursing home, ambulatory surgical facility, or diagnostic or outpatient treatment facility. A physician's office is not a device user facility.

(g) *Manufacturer* means any person, including any importer, repacker, and/or relabeler, who manufactures, prepares, propagates, compounds, assembles, processes a device, or engages in any of the activities described in § 807.3(d) of this chapter.

(h) *Postmarket surveillance* means the active, systematic, scientifically valid collection, analysis, and interpretation of data or other information about a marketed device.

(i) *Prospective surveillance* means that the subjects are identified at the beginning of the surveillance and data or other information will be collected from that time forward (as opposed to retrospective surveillance).

(j) *Serious adverse health consequences* means any significant adverse experience related to a device, including device-related events that are life-threatening or that involve permanent or long-term injuries or illnesses.

(k) *Specific guidance* means guidance that provides information regarding postmarket surveillance for specific types or categories of devices or specific postmarket surveillance issues. This type of guidance may be used to supplement general guidance and may address such topics as the type of surveillance approach that is appropriate for the device and the postmarket surveillance question, sample size, or specific reporting requirements.

(l) *Surveillance question* means the issue or issues to be addressed by the postmarket surveillance.

(m) *Unforeseen adverse event* means any serious adverse health consequence that either is not addressed in the labeling of the device or occurs at a rate higher than anticipated.

§ 822.4 Does this part apply to me?

If we have ordered you to conduct postmarket surveillance of a medical device under section 522 of the act, this part applies to you. We have the authority to order postmarket surveillance of any class II or class III medical device, including a device reviewed under the licensing provisions of section 351 of the Public Health Service Act, that meets any of the following criteria:

(a) Failure of the device would be reasonably likely to have serious adverse health consequences;

(b) The device is intended to be implanted in the human body for more than 1 year; or

(c) The device is intended to be used to support or sustain life and to be used outside a user facility.

Subpart B—Notification

§ 822.5 How will I know if I must conduct postmarket surveillance?

We will send you a letter (the postmarket surveillance order) notifying you of the requirement to conduct postmarket surveillance. Before we send the order, or as part of the order, we may require that you submit information about your device that will allow us better to define the scope of a surveillance order. We will specify the device(s) subject to the surveillance order and the reason that we are requiring postmarket surveillance of the device under section 522 of the act. We will also provide you with any general or specific guidance that is available to help you develop your plan for conducting postmarket surveillance.

§ 822.6 When will you notify me that I am required to conduct postmarket surveillance?

We will notify you as soon as we have determined that postmarket surveillance of your device is necessary, based on the identification of a surveillance question. This may occur during the review of a marketing application for your device, as your device goes to market, or after your device has been marketed for a period of time.

§ 822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

(a) If you do not agree with our decision to order postmarket surveillance for a particular device, you may request review of our decision by:

(1) Requesting a meeting with the Director, Office of Surveillance and Biometrics, who generally issues the order for postmarket surveillance;

(2) Seeking internal review of the order under § 10.75 of this chapter;

(3) Requesting an informal hearing under part 16 of this chapter; or

(4) Requesting review by the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

(b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health's (CDRH's) Web site (www.fda.gov/cdrh/resolvingdisputes), and from the CDRH Facts-on-Demand system (800–899–0381 or 301–827–0111).

Subpart C—Postmarket Surveillance Plan

§ 822.8 When, where, and how must I submit my postmarket surveillance plan?

You must submit your plan to conduct postmarket surveillance within 30 days of the date you receive the postmarket surveillance order. For devices regulated by the Center for Devices and Radiological Health, you should send three copies of your submission to the Center for Devices and Radiological Health, Postmarket Surveillance Document Center (HFZ–510), 1350 Piccard Dr., Rockville, MD, 20850. For devices regulated by the Center for Biologics Evaluation and Research, send three copies of your submission to the Center for Biologics Evaluation and Research, Document Control Center, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. When we receive your original submission, we will send you an acknowledgment letter identifying the unique document number assigned to your submission. You must use this number in any correspondence related to this submission.

§ 822.9 What must I include in my submission?

Your submission must include the following:

(a) Organizational/administrative information:

(1) Your name and address;

(2) Generic and trade names of your device;

(3) Name and address of the contact person for the submission;

(4) Premarket application/submission numbers for your device;

(5) Table of contents identifying the page numbers for each section of the submission;

(6) Description of the device (this may be incorporated by reference to the appropriate premarket application/submission);

(7) Product codes and a list of all relevant model numbers; and

(8) Indications for use and claims for the device;

(b) Postmarket surveillance plan;

(c) Designated person information;

(1) Name, address, and telephone number; and

(2) Experience and qualifications.

§ 822.10 What must I include in my surveillance plan?

Your surveillance plan must include a discussion of:

(a) The plan objective(s) addressing the surveillance question(s) identified in our order;

(b) The subject of the study, e.g., patients, the device, animals;

(c) The variables and endpoints that will be used to answer the surveillance question, e.g., clinical parameters or outcomes;

(d) The surveillance approach or methodology to be used;

(e) Sample size and units of observation;

(f) The investigator agreement, if applicable;

(g) Sources of data, e.g., hospital records;

(h) The data collection plan and forms;

(i) The consent document, if applicable;

(j) Institutional Review Board information, if applicable;

(k) The patient followup plan, if applicable;

(l) The procedures for monitoring conduct and progress of the surveillance;

(m) An estimate of the duration of surveillance;

(n) All data analyses and statistical tests planned;

(o) The content and timing of reports.

§ 822.11 What should I consider when designing my plan to conduct postmarket surveillance?

You must design your surveillance to address the postmarket surveillance question identified in the order you received. You should consider what, if any, patient protection measures should be incorporated into your plan. You should also consider the function, operating characteristics, and intended use of your device when designing a surveillance approach.

§ 822.12 Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?

Guidance documents that discuss our current thinking on preparing a postmarket surveillance submission and designing a postmarket surveillance plan are available on the Center for Devices and Radiological Health's Web site and from the Center for Devices and Radiological Health, Office of Surveillance and Biometrics (HFZ-510), 1350 Piccard Dr., Rockville, MD 20850. Guidance documents represent our current interpretation of, or policy on, a regulatory issue. They do not establish legally enforceable rights or responsibilities and do not legally bind you or FDA. You may choose to use an approach other than the one set forth in a guidance document, as long as your alternative approach complies with the relevant statutes (laws) and regulations. If you wish, we will meet with you to discuss whether an alternative approach you are considering will satisfy the requirements of the act and regulations.

§ 822.13 [Reserved]

§ 822.14 May I reference information previously submitted instead of submitting it again?

Yes, you may reference information that you have submitted in premarket submissions as well as other postmarket surveillance submissions. You must specify the information to be incorporated and the document number and pages where the information is located.

§ 822.15 How long must I conduct postmarket surveillance of my device?

The length of postmarket surveillance will depend on the postmarket surveillance question identified in our order. We may order prospective surveillance for a period up to 36 months; longer periods require your agreement. If we believe that a prospective period of greater than 36 months is necessary to address the surveillance question, and you do not agree, we will use the Medical Devices Dispute Resolution Panel to resolve the matter. You may obtain guidance regarding dispute resolution procedures from the Center for Devices and Radiological Health's (CDRH) Web site (www.fda.gov/cdrh/resolvingdisputes/ombudsman.html) and from the CDRH Facts-on-Demand system (800–899–0381 or 301–827–0111, document number 1121). The 36-month period refers to the surveillance period, not the length of time from the issuance of the order.

Subpart D—FDA Review and Action

§ 822.16 What will you consider in the review of my submission?

First, we will determine that the submission is administratively complete. Then, in accordance with the law, we must determine whether the designated person has appropriate qualifications and experience to conduct the surveillance and whether the surveillance plan will result in the collection of useful data that will answer the surveillance question.

§ 822.17 How long will your review of my submission take?

We will review your submission within 60 days of receipt.

§ 822.18 How will I be notified of your decision?

We will send you a letter notifying you of our decision and identifying any action you must take.

§ 822.19 What kinds of decisions may you make?

If your plan:	Then we will send you:	And you must:
(a) Should result in the collection of useful data that will address the postmarket surveillance question	An approval order, identifying any specific requirements related to your postmarket surveillance	Conduct postmarket surveillance of your device in accordance with the approved plan
(b) Should result in the collection of useful data that will address the postmarket surveillance question after specific revisions are made or specific information is provided	An approvable letter identifying the specific revisions or information that must be submitted before your plan can be approved	Revise your postmarket surveillance submission to address the concerns in the approvable letter and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit
(c) Does not meet the requirements specified in this part	A letter disapproving your plan and identifying the reasons for disapproval	Revise your postmarket surveillance submission and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit
(d) Is not likely to result in the collection of useful data that will address the postmarket surveillance question	A letter disapproving your plan and identifying the reasons for disapproval	Revise your postmarket surveillance submission and submit it to us within the specified timeframe. We will determine the timeframe case-by-case, based on the types of revisions or information that you must submit

§ 822.20 What are the consequences if I fail to submit a postmarket surveillance plan, my plan is disapproved and I fail to submit a new plan, or I fail to conduct surveillance in accordance with my approved plan?

The failure to have an approved postmarket surveillance plan or failure to conduct postmarket surveillance in accordance with the approved plan constitutes failure to comply with section 522 of the act. Your failure would be a prohibited act under section 301(q)(1)(C) of the act, and your device would be misbranded under section 502(t)(3) of the act. We have the authority to initiate actions against products that are adulterated or misbranded, and against persons who commit prohibited acts. Adulterated or misbranded devices can be seized. Persons who commit prohibited acts can be enjoined from committing such acts, required to pay civil money penalties, or prosecuted.

§ 822.21 What must I do if I want to make changes to my postmarket surveillance plan after you have approved it?

You must receive our approval in writing before making changes in your plan that will affect the nature or validity of the data collected in accordance with the plan. To obtain our approval, you must submit three copies of the request to make the proposed change and revised postmarket surveillance plan to the applicable address listed in § 822.8. You may reference information already submitted in accordance with § 822.14. In your cover letter, you must identify your submission as a supplement and cite the unique document number that we assigned in our acknowledgment letter for your original submission, specifically identify the changes to the plan, and identify the reasons and justification for making the changes. You must report changes in your plan that will not affect the nature or validity of the data collected in accordance with the plan in the next interim report required by your approval order.

§ 822.22 What recourse do I have if I do not agree with your decision?

(a) If you disagree with us about the content of your plan or if we disapprove your plan, or if you believe there is a less burdensome approach that will answer the surveillance question, you may request review of our decision by:

(1) Requesting a meeting with the Director, Office of Surveillance and Biometrics, Center for Devices and Radiological Health (CDRH), who generally issues the order for postmarket surveillance;

(2) Seeking internal review of the order under § 10.75 of this chapter;

(3) Requesting an informal hearing under part 16 of this chapter; or

(4) Requesting review by the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

(b) You may obtain guidance documents that discuss these mechanisms from the CDRH Web site and from the CDRH Facts-on-Demand System (800–899–0381 or 301–827–0111).

§ 822.23 Is the information in my submission considered confidential?

We consider the content of your submission confidential until we have approved your postmarket surveillance plan. After we have approved your plan, the contents of the original submission and any amendments, supplements, or reports may be disclosed in accordance with the Freedom of Information Act. We will continue to protect trade secret and confidential commercial information after your plan is approved. We will not disclose information identifying individual patients. You may wish to indicate in your submission which information you consider trade secret or confidential commercial.

Subpart E—Responsibilities of Manufacturers

§ 822.24 What are my responsibilities once I am notified that I am required to conduct postmarket surveillance?

You must submit your plan to conduct postmarket surveillance to us within 30 days from receipt of the order (letter) notifying you that you are required to conduct postmarket surveillance of a device.

§ 822.25 What are my responsibilities after my postmarket surveillance plan has been approved?

After we have approved your plan, you must conduct the postmarket surveillance of your device in accordance with your approved plan. This means that you must ensure that:

(a) Postmarket surveillance is initiated in a timely manner;

(b) The surveillance is conducted with due diligence;

(c) The data identified in the plan is collected;

(d) Any reports required as part of your approved plan are submitted to us in a timely manner; and

(e) Any information that we request prior to your submission of a report or in response to our review of a report is provided in a timely manner.

§ 822.26 If my company changes ownership, what must I do?

You must notify us within 30 days of any change in ownership of your company. Your notification should identify any changes to the name or address of the company, the contact person, or the designated person (as defined in § 822.3(b)). Your obligation to conduct postmarket surveillance will generally transfer to the new owner, unless you and the new owner have both agreed that you will continue to conduct the surveillance. If you will continue to conduct the postmarket surveillance, you still must notify us of the change in ownership.

§ 822.27 If I go out of business, what must I do?

You must notify us within 30 days of the date of your decision to close your business. You should provide the expected date of closure and discuss your plans to complete or terminate postmarket surveillance of your device. You must also identify who will retain the records related to the surveillance (described in subpart G of this part) and where the records will be kept.

§ 822.28 If I stop marketing the device subject to postmarket surveillance, what must I do?

You must continue to conduct postmarket surveillance in accordance with your approved plan even if you no longer market the device. You may request that we allow you to terminate postmarket surveillance or modify your postmarket surveillance because you no longer market the device. We will make these decisions on a case-by-case basis, and you must continue to conduct the postmarket surveillance unless we notify you that you may stop your surveillance study.

Subpart F—Waivers and Exemptions

§ 822.29 May I request a waiver of a specific requirement of this part?

You may request that we waive any specific requirement of this part. You may submit your request, with supporting documentation, separately or as a part of your postmarket surveillance submission to the address in § 822.8.

§ 822.30 May I request exemption from the requirement to conduct postmarket surveillance?

You may request exemption from the requirement to conduct postmarket surveillance for your device or any specific model of that device at any time. You must comply with the requirements of this part unless and until we grant an exemption for your device. Your request for exemption must explain why you believe we should exempt the device or model from postmarket surveillance. You should demonstrate why the surveillance question does not apply to your device or does not need to be answered for the device for which you are requesting exemption. Alternatively, you may provide information that answers the surveillance question for your device, with supporting documentation, to the address in § 822.8.

Subpart G—Records and Reports

§ 822.31 What records am I required to keep?

You must keep copies of:

(a) All correspondence with your investigators or FDA, including required reports;

(b) Signed agreements from each of your investigators, if your surveillance plan uses investigators, stating the commitment to conduct the surveillance in accordance with the approved plan, any applicable FDA regulations, and any conditions of approval for your plan, such as reporting requirements;

(c) Your approved postmarket surveillance plan, with documentation of the date and reason for any deviation from the plan;

(d) All data collected and analyses conducted in support of your postmarket surveillance plan; and

(e) Any other records that we require to be maintained by regulation or by order, such as copies of signed consent documents, evidence of Institutional Review Board review and approval, etc.

§ 822.32 What records are the investigators in my surveillance plan required to keep?

Your investigator must keep copies of:

(a) All correspondence between investigators, FDA, the manufacturer, and the designated person, including required reports.

(b) The approved postmarket surveillance plan, with documentation of the date and reason for any deviation from the plan.

(c) All data collected and analyses conducted at that site for postmarket surveillance.

(d) Any other records that we require to be maintained by regulation or by order.

§ 822.33 How long must we keep the records?

You, the designated person, and your investigators must keep all records for a period of 2 years after we have accepted

your final report, unless we specify otherwise.

§ 822.34 What must I do with the records if the sponsor of the plan or an investigator in the plan changes?

If the sponsor of the plan or an investigator in the plan changes, you must ensure that all records related to the postmarket surveillance have been transferred to the new sponsor or investigator and notify us within 10 working days of the effective date of the change. You must provide the name, address, and telephone number of the new sponsor or investigator, certify that all records have been transferred, and provide the date of transfer.

§ 822.35 Can you inspect my manufacturing site or other sites involved in my postmarket surveillance plan?

We can review your postmarket surveillance programs during regularly scheduled inspections, inspections initiated to investigate recalls or other similar actions, and inspections initiated specifically to review your postmarket surveillance plan. We may also inspect any other person or site involved in your postmarket surveillance, such as investigators or contractors. Any person authorized to grant access to a facility must permit authorized FDA employees to enter and inspect any facility where the device is held or where records regarding postmarket surveillance are held.

§ 822.36 Can you inspect and copy the records related to my postmarket surveillance plan?

We may, at a reasonable time and in a reasonable manner, inspect and copy any records pertaining to the conduct of postmarket surveillance that are required to be kept by this regulation. You must be able to produce records and information required by this regulation that are in the possession of others under contract with you to conduct the postmarket surveillance. Those who have signed agreements or are under contract with you must also produce the records and information upon our request. This information must be produced within 72 hours of the initiation of the inspection. We generally will redact information pertaining to individual subjects prior to copying those records, unless there are extenuating circumstances.

§ 822.37 Under what circumstances would you inspect records identifying subjects?

We can inspect and copy records identifying subjects under the same circumstances that we can inspect any records relating to postmarket surveillance. We are likely to be interested in such records if we have reason to believe that required reports have not been submitted, or are incomplete, inaccurate, false, or misleading.

§ 822.38 What reports must I submit to you?

You must submit interim and final reports as specified in your approved postmarket surveillance plan. In addition, we may ask you to submit additional information when we believe that the information is necessary for the protection of the public health and implementation of the act. We will also state the reason or purpose for the request and how we will use the information.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–14100 Filed 6–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 41 and 42

[Public Notice 4028]

Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Visa Fees: Interim Rule With Request for Comments

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule reflects and conforms visa regulations to the changes made in a final rule amending the Schedule of Consular Services Fees published on Thursday, May 16, 2002. The latter rule waives all nonimmigrant visa fees for U. S. Government foreign national employees who are travelling to the United States on official business. It also provides for merging the processing and issuance fees associated with immigrant visas. Each of those changes necessitates the revision of related visa regulations. Finally, this rule eliminates a subsection relating to the validity of visas issued to certain residents of Hong Kong, because the law underlying that provision expired on January 1, 2002.

DATES: Written comments may be submitted on or before July 8, 2002.

ADDRESSES: Written comments may be submitted, in duplicate, to the Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106 or by e-mail to *visaregs@state.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1221, e-mail *harperb@state.gov,* or fax at (202) 663–3898 with respect to the legal sufficiency of this rule or similar matters. For enquiries about the effect of this rule on individual cases, contact the Visa Office by e-mail at *www.usvisa.state.gov.* See reference to Susan Abeyta below, regarding comments on the changes in the Schedule of Fees.

SUPPLEMENTARY INFORMATION: A current regulation, at 22 CFR 41.107(c), lists the two classes of aliens who are exempt from the payment of nonimmigrant visa fees. This rule adds foreign employees of the U.S. Government who will travel to the United States on official business to that list.

With respect to immigrant visas, 22 CFR 42.71(b) currently identifies two levels of activity for which fees are assessed. The first is for the processing of an application for an immigrant visa and the second is for the issuance of such a visa. It also sets forth different time frames for the collection of such individual fees. As the Department is combining these fees into a single fee covering all processing functions, editorial changes to 42.71 have become necessary. The timing of the payment of these fees and the basis for the refund of the single fee have been appropriately modified to accord with having one fee rather than separate fees for separate services.

Why Are These Changes Being Made?

The changes in this interim rule are necessary, as stated above, because the Schedule of Consular Services Fees was recently amended in a final rule published May 16, 2002 (Public Notice 4016; 67 FR 34831).

Why Was the Fee Schedule Changed?

A cost study underlies the changes in the proposed new Schedule of Consular Fees, which includes some modest increases in some visa fees. The considerations taken into account are set forth fully in the rule pertaining to the new Schedule. Any questions regarding the changes in the fee schedule should be directed to Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, telefax: (202) 663–2499; e-mail: fees@state.gov as noted in that proposed rule.

Why Is There a Waiver of Fees for Some Nonimmigrants and Not Others?

The Congress in a public law enacted one of the current waivers of fees and

another results from international comity. The latest addition to the list, made in this rule, is for non-citizen employees of the United States Government, who are employed abroad but coming to the United States on official business in connection with that employment. We believe such travel to be primarily in the interest of the U.S. Government, so that the issuance of the visa is not primarily a benefit to the traveler for which a fee would be charged.

Are There Any Other Changes in This Regulation?

Yes. We are making editorial amendments in the several places where references to ''application and issuance fees'' appear in other sections of part 42, to conform with the language changes discussed above. We are also deleting a subsection of 22 CFR 42.72 relating to immigrants from Hong Kong because the underlying statute expired on January 1, 2002.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 30-day provision for public comments, to accord with the proposed rule it is complementing.

Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the 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 section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 41 and 42

Aliens, Fees, Immigrants, Nonimmigrants, Passports and visas.

Accordingly, the Department of State amends 22 CFR Chapter I as set forth below:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Add to § 41.107(c) a new paragraph (c)(3) to read as follows:

§ 41.107 Visa Fees.

* * * * *

(c) *Certain aliens exempted from fees.*

* * * * *

(3) Foreign national employees of the U. S. Government who are travelling to the United States on official business in connection with that employment.

* * * * *

PART 42—[AMENDED]

3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

4. Revise § 42.33(h)(2) to read as follows:

§ 42.33 Diversity Immigrants.

* * * * *

(h) *Further processing.*

* * * * *

(2) Names of visa recipients shall not be maintained in connection with this information and the information shall be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

(i) *Diversity Visa Lottery Surcharge.* In addition to collecting the immigrant visa application processing fee, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such fee for the processing of the diversity lottery as the Secretary of State prescribes.

(ii) [Reserved]

5. Revise § 42.71 to read as follows:

§ 42.71 Authority to issue visas; visa fees.

(a) *Authority to issue visas.* Consular officers may issue immigrant visas at designated consular offices abroad pursuant to the authority contained in INA 101(a)(16), 221(a), and 224. (Consular offices designated to issue immigrant visas are listed periodically in Visa Office Bulletins published at www.travel.state.gov by the Department of State.) A consular officer assigned to duty in the territory of a country against which the sanctions provided in INA 243(d) have been invoked must not issue an immigrant visa to an alien who is a national, citizen, subject, or resident of that country, unless the officer has been informed that the sanction has been waived by INS in the case of an individual alien or a specified class of aliens.

(b) *Immigrant visa fees.* The Secretary of State prescribes a fee for the processing of immigrant visa applications. An individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the processing fee upon being notified that a visa is expected to become available in the near future and being requested to obtain the supporting documentation needed to apply formally for a visa. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer

in charge of a consular section determines that the application was not adjudicated as a result of action by the U. S. Government over which the alien had no control and for which the alien was not responsible, that precluded the applicant from benefiting from the processing.

§ 42.72 [Amended]

6. Amend § 42.72 by removing and reserving paragraph (c).

§ 42.74 [Amended]

7. Amend § 42.74 by:

a. In paragraph (a)(2)(i), (b)(iv), and (c), removing ''statutory'', removing ''and issuance'' and adding in its place ''processing'', and adding ''prescribed in the Schedule of Fees'' after ''fees''; and

b. In paragraph (b)(1)(v) add an ''s'' to ''ascertain''.

Dated: April 19, 2002.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–13001 Filed 6–5–02; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 182–4196a; FRL–7224–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP). Pennsylvania has requested a one-year extension of the Federal deadline to incorporate electronic checks of on-board diagnostic (OBD) computer systems of 1996-and-newer vehicles into the Commonwealth's motor vehicle emissions inspection and maintenance (I/M) program. EPA's rules governing I/M programs required states to add OBD checks to their I/M programs by January 1, 2002. However, EPA's same rule provides states the option to submit a request for delay of this deadline by up to one additional year, provided each state making such a request demonstrates to EPA that such a delay was necessary. Pennsylvania has requested the maximum delay provided for by EPA's regulations (i.e., until January 1, 2003) in commencing OBD checks as part of its I/M program. EPA has reviewed Pennsylvania's request, and is proposing through this action to grant Pennsylvania's request for a one year extension of the OBD testing deadline in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 5, 2002, without further notice, unless EPA receives adverse written comment by July 8, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mail code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of these relevant documents are also available from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the Onboard Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M requirements rule requires that electronic checks of the on-board diagnostics system of applicable 1996-and-newer motor vehicles (OBD) be conducted as part of states' motor vehicle I/M programs. This revised I/M requirements rule applies only to those areas required to implement an I/M program under the Clean Air Act of 1990. This rule establishes a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check. However, the revised I/M rule also provides several options to states to delay implementation of OBD testing, under certain circumstances, beyond the prescribed January 1, 2002 deadline. One such option provides for a one-time, 12-month extension of the deadline for states to begin conducting mandatory OBD checks (to as late as January 1, 2003) provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents ''the best the state can reasonably do''.

EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

Pennsylvania has submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. Pennsylvania's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the Commonwealth's request for extension of the OBD testing deadline in Pennsylvania.

Summary of SIP Revision

On December 14, 2001, Pennsylvania submitted a formal revision to its State Implementation Plan (SIP), which constitutes a request to delay the addition of on-board diagnostic system checks of 1996-and-newer vehicles to the Commonwealth's adopted and SIP-approved I/M program.

Pennsylvania's SIP revision to request a delay in adding OBD testing to its I/M program lists several factors that effect the Commonwealth's ability to conduct OBD testing at this time. The Commonwealth's justification for its request of a one-year delay includes the following factors:

(1) Hardware and software deficiencies associated with the OBD testing equipment and its ability to communicate with Pennsylvania's Vehicle Inspection Information Database (VIID), as well as the commercial availability of equipment meeting the Commonwealth's specifications and requirements,

(2) Software deficiencies related to Pennsylvania's VIID, pertaining to communications between testing stations and the program oversight contractor and the VIID,

(3) The need for additional and updated training of Pennsylvania's sizable I/M testing and vehicle repair communities,

(4) The need for additional public outreach and public education in order to increase public acceptance of OBD testing,

(5) The Commonwealth's desire to conduct a small-scale, pilot OBD test program prior to the widespread launch of mandatory OBD testing as an element of the broader I/M program,

(6) The time frame associated with the completion of the regulatory adoption process in Pennsylvania necessary to add OBD checks to the I/M program regulations,

(7) The time frame associated with public notice/public participation related to the Commonwealth's regulatory process, and

(8) The time frame for submitting an OBD I/M SIP to EPA upon adoption of such Pennsylvania OBD I/M regulations.

The Commonwealth's request lists several activities that Pennsylvania has performed (prior to the date of this request for a testing deadline extension) to facilitate the addition of OBD testing to the Pennsylvania I/M program. The preparation activities listed in the Commonwealth's SIP include:

(1) The formation of the Pennsylvania Enhanced Emissions Inspection Policy Review Group to consider, among other things, the inclusion of OBD checks as part of Pennsylvania's I/M program. This group recommended that the Commonwealth petition EPA for a one-year extension of the January 1, 2002 OBD testing deadline.

(2) The continuation of meetings of the Pennsylvania Department of Transportation's I/M Working Group to consider issues related to OBD-based I/M testing and repair.

II. Final Action

EPA is granting the Commonwealth's request for a one-year extension of the OBD testing deadline, per the guidelines established by EPA in its amended Vehicle Inspection and Maintenance Program Requirements Rule, published in the April 5, 2001 edition of the **Federal Register** (66 FR 18156). The Commonwealth has adequately justified a one-year extension of the January 1, 2002 Federal OBD I/M testing deadline. EPA therefore proposes to grant a one-year extension of the deadline to commence OBD testing as part of the Pennsylvania I/M program to January 1, 2003. EPA has determined that this delayed implementation schedule represents the timeliest implementation schedule that the Commonwealth can perform, and is ''the best the state can reasonably do''.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial request and anticipates no adverse comment as EPA's I/M program requirements regulations allow the Administrator to grant such an extension request if a state provides a justification that meets the factors set forth in EPA's I/M regulations (66 FR 18156). However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the Commonwealth's SIP revision in the event that adverse comments are filed with EPA. This rule will be effective on August 5, 2002, without further notice unless EPA receives adverse comment by July 8, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a

''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the deadline for incorporation of on-board diagnostics checks to the Pennsylvania I/M program by one year must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: May 29,2002.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2022 is amended by adding paragraph (f) to read as follows:

§ 52.2022 Extensions

* * * * *

(f) The Administrator hereby extends by 12 months the deadline by which Pennsylvania must incorporate mandatory testing of second generation on-board diagnostics (OBD-II) equipped motor vehicles as part of its inspection and maintenance (I/M) program. As a result of this deadline extension, Pennsylvania must now incorporate mandatory OBD-II checks (for 1996-and-newer OBD-II-equipped vehicles) as an element of the Commonwealth's I/M program in all enhanced I/M program areas by January 1, 2003.

[FR Doc. 02–14035 Filed 6–5–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–9 and 102–192

[FPMR Amendment A–58]

RIN 3090–AH13

Mail Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: The anthrax crisis has made the health and security of Federal employees the primary concerns of the General Services Administration's (GSA's) mail communications policy program. GSA published a proposed rule in the **Federal Register** on May 29, 2001 (66 FR 29067) to solicit opinions from the mail community on changes to the mail regulation. GSA is publishing this interim rule now because it is critical that we provide updated mail security requirements and guidance as quickly as possible.

This is an interim rule because we recognize that the security and financial requirements in this rule will continue to evolve. Before formulation of the final rule, we will solicit agencies for comment. We are allowing time for agencies to gain experience with this interim rule prior to obtaining input for the final rule.

DATES: This interim rule is effective June 6, 2002.

ADDRESSESS: Send written comments to: Rodney Lantier, Regulatory Secretariat, Acquisition Policy Division (MVP), General Services Administration, 1800 F Street, NW., Washington, DC 20405. Send comments by e-mail to: *RIN.3090-AH13@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Henry Maury, Mail Communications Policy Division (MTM) or *henry.maury@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The purposes of this interim rule are to update and clarify FPMR part 101–9, Federal Mail Management, and move it into the Federal Management Regulation (FMR). This interim rule is written in a plain language, question and answer format. This style uses the active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule; that is, Federal agencies and Federal employees must follow the language contained in both the question and its answer.

Section 2 of Public Law 94–575, the Federal Records Management Amendments of 1976, as amended, directs the Administrator of General Services to provide guidance and assistance to Federal agencies on records management, including the processing of mail by Federal agencies, and this interim rule implements that direction. In doing so, this interim rule establishes four requirements for all agencies and four additional requirements for agencies that mail over $1 million annually. These requirements are described in sections 102–192.50 and 102–192.55 respectively.

Agency Comments on the Proposed Rule

In response to the proposed rule, we received comments from nineteen agencies, two boards and one from the private sector. All comments were considered in the formulation of this interim rule.

Several comments concerned the proper definition of ''user level''. The concept here is that Federal mailers, or users, will better manage their mailing expenses if they are charged for the actual cost of their mailings. The definition of ''user level'' was deliberately vague to allow agencies to define users in a way that best fit their organizations. For instance, an agency could define ''user'' as an organizational entity, program, or location. To make the concept clearer, we have changed the term to ''program level''.

Many respondents were also unclear how we defined ''system'' in the proposed regulation. We have added a definition in section 102–192.35 to explain the term.

To reduce the confusion over agency requirements, we have reorganized the interim rule to separate required actions from recommended actions.

The most frequent comment was that providing GSA with volumetric and cost data from users at all levels within the agency would be prohibitively expensive, would adversely impact mail delivery, and would not provide a benefit to the agencies or GSA. This interim rule alters the requirement by allowing agencies to gather the needed data by any method they deem appropriate. When more agencies have availed themselves of automated tools for gathering data on mail operations, this requirement will be revisited.

The proposed regulation required that agencies' financial accountability systems capture costs associated with mailing. So that we may address agencies' security concerns quickly, we are temporarily foregoing the financial accountability component of the proposed regulation. We plan to implement this requirement when

mailing and financial systems can more easily track costs. We will continue to work with the agencies' mail management plans and promote best practices towards this goal.

Many comments were received about the Official Mail Accounting System (OMAS)—see definition in section 102–192.35. In most agencies, OMAS does not account for mail below the Chief Financial Officer level and its use creates no incentive to save money on mail; the people who decide whether something should be mailed, what shape it should take, what postage should be applied, and how many copies should go out, are not the people who pay for the postage. Most Federal mailers, therefore, have little incentive to limit mailing costs.

The General Services Administration has discussed this situation with Federal financial experts, mail industry consultants, the Office of Management and Budget, and many Federal mail managers. Every private-sector expert that GSA has reached agrees that giving the program managers information about, and responsibility for, the money they spend on mail is critical to improved management and cost control. We have also studied the experience of the five Federal agencies (most notably the Department of Defense) that have converted all or part of their postage to commercial payment processes. On the basis of this discussion and consideration, the General Services Administration has decided to direct the Federal agencies that fall within its authority to stop using OMAS to account for postage and to pay for postage using commercial payment processes. The effective date for this direction is October 1, 2003.

When Federal line managers pay for postage the same way that private sector organizations do, and account for postage costs through their standard accounting and budget processes, they are able to:

Track postage costs in real time;

Measure performance;

Identify opportunities to save money before they spend it;

Identify instances of potential fraud;

Streamline operations and improve productivity;

Eliminate the extra administrative burden of a cumbersome system; and

Increase their ability to react quickly to problems.

We recognize that the transition to commercial payment for postage will be more complicated for some agencies than for others, but we have determined that it will benefit all Federal agencies and the taxpayers in the long run. We estimate savings resulting from Federal agencies' withdrawal from OMAS will be approximately $70 million annually across the government.

B. Executive Order 12866

GSA has determined that this interim rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects

41 CFR Part 101–9

Government property management.

41 CFR Part 102–192

Government contracts, Intergovernmental relations, Reporting and recordkeeping requirements, Security measurements.

For the reasons set forth in the preamble, 41 CFR chapters 101 and 102 are amended as follows:

CHAPTER 101—[AMENDED]

1. Part 101–9 is revised to read as follows:

PART 101–9—FEDERAL MAIL MANAGEMENT

Authority: Sec. 2, Pub. L. 94–575, as amended, 44 U.S.C. 2904; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–9.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For Federal mail management information previously contained in this part, see FMR part 192 (41 CFR part 102–192).

CHAPTER 102—[AMENDED]

2. Part 102–192 is added to subchapter G to read as follows:

PART 102–192—MAIL MANAGEMENT

Subpart A—General Provisions

Subpart B—General Requirements

Subpart C—Reporting Requirements

Subpart D—Security Provisions

Subpart E—Recommended Actions

Subpart F—Agency Mail Manager Responsibilities

Subpart G—Facility Mail Manager Responsibilities

Authority: Sec. 2, Pub. L. 94–575, as amended, 44 U.S.C. 2904; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

Subpart A—General Provisions

§ 102–192.5 What does this part cover?

This part prescribes policy and requirements for the efficient, effective, economical, and secure management of incoming, internal, and outgoing mail in Federal agencies.

§ 102–192.10 What authority governs this part?

This part is governed by Section 2 of Public Law 94–575, the Federal Records Management Amendments of 1976 (44 U.S.C. 2901–2904), as amended, which requires the Administrator of General Services to provide guidance and assistance to Federal agencies on records management and defines the processing of mail by Federal agencies as a records management activity.

§ 102–192.15 How are ''I'', ''you'', ''me'', ''we'', and ''us'' used in this part?

In this part, ''I'', ''me'', and ''you'' (in its singular sense) refer to agency mail managers and/or facility mail managers; the context makes it clear which usage is intended in each case. ''We'', ''us'', and ''you'' (in its plural sense) refer to your Federal agency.

§ 102–192.20 How are ''must'' and ''should'' used in this part?

In this part:

(a) ''Must'' identifies steps that Federal agencies are required to take; and

(b) ''Should'' identifies steps that GSA recommends.

§ 102–192.25 Does this part apply to me?

Yes, this part applies to you if you work in a Federal agency, as defined in § 102–192.35.

§ 102–192.30 What types of mail does this part apply to?

This part applies to all materials that might pass through a Federal mail processing center, including:

(a) All internal, incoming, and outgoing materials such as envelopes, bulk mail, expedited mail, individual packages up to 70 pounds, publications, and postal cards, regardless of whether or not they currently pass through a particular mail center;

(b) Similar materials carried by agency personnel, contractors, the United States Postal Service (USPS), and all other carriers of such items; and

(c) Electronic mail only if it is printed out and mailed as described in paragraphs (a) and (b) of this section; however, this part encourages agencies to maximize use of electronic mail in lieu of printed media, so long as it is cost-effective.

§ 102–192.35 What definitions apply to this part?

The following definitions apply to this part:

Agency mail manager means the person who manages the overall mail communications program of a Federal agency. The *agency mail manager* also represents the agency in its relations with mail service providers, other agency mail managers, and the GSA Office of Governmentwide Policy.

Class of mail means the 5 categories of domestic mail as defined by the United States Postal Service (USPS) in the Domestic Mail Manual, (C100 through C600.1.z). These are:

(1) Express Mail and Priority Mail.

(2) First Class.

(3) Standard Mail (e.g., bulk marketing mail).

(4) Package Services.

(5) Periodicals.

Commingling means the merging of outgoing mail from one facility or agency with outgoing mail from at least one other source.

Expedited mail is a generic term that means mail designated for delivery more quickly than the USPS's normal delivery times (which vary by class of mail). Examples of *expedited mail* include USPS Express Mail and overnight and two-day delivery by other service providers.

Facility mail manager means the person responsible for mail in a specific Federal facility. There may be many *facility mail managers* within a Federal agency. *See* subpart G of this part for additional information about facility mail managers.

Federal agency (or agency) means:

(1) Any executive department as defined in 5 U.S.C. 101;

(2) Any wholly owned Government corporation as defined in 31 U.S.C. 9101;

(3) Any independent establishment in the executive branch as defined in 5 U.S.C. 104; and

(4) Any establishment in the legislative branch, except the Senate, the House of Representatives, the Architect of the Capitol, and all activities under the direction of the Architect of the Capitol (44 U.S.C. 2901(14)).

Federal facility (or facility) means any office building, installation, base, etc., where Federal agency employees work; this includes any facility where the Federal government pays postage expenses even though few Federal employees are involved in processing the mail.

Incoming mail means any mail that comes into the agency delivered by any service provider, such as the USPS, UPS, FedEx, or DHL.

Internal mail means mail generated within a Federal facility that is delivered within that facility or to a nearby facility of the same agency, so long as it is delivered by agency personnel or a dedicated agency contractor (i.e., not a service provider).

Large agency means a Federal agency whose total annual mail payments to all service providers exceeds $1 million. See appendix A to this part for a current list of the large agencies.

Mail means the types of mail described in § 102–192.30.

Mail costs means allocations and expenses for postage and all other *mail* costs (*e.g.,* payments to service providers, mail center personnel costs, mail center overhead, etc.).

Mail piece design means laying out and printing items to be mailed such that they can be processed efficiently and effectively by automated mail-processing equipment.

Mail system means all of the components of your mail operation including your methods for capturing data on your mail users, their volumes, and costs. The *mail system* includes the financial and accounting systems. It can be automated, manual or both.

Official Mail Accounting System (OMAS) is the Postal Service's government-unique system used to track postage used by most Federal agencies. *OMAS* is used in conjunction with each agency's online payment and accounting system (OPAC) account at the Treasury.

Outgoing mail means mail generated within a Federal facility that is going outside that facility and is delivered by a service provider.

Postage means money due or paid to any service provider.

Presort means a mail preparation used to receive a discounted mailing rate by sorting mail according to USPS standards.

Program Level means a subsidiary part of a Federal agency that generates a significant quantity of outgoing mail. It could apply to an agency organizational entity, program, or project. (See subpart H of this part for additional information.)

Service provider means any agency or company that delivers mail. Some examples of service providers are USPS, UPS, FedEx, DHL, courier services, the Military Postal Service Agency, the State Department of Diplomatic Pouch and Mail Division and other Federal agencies providing mail services.

Special services means those mail services that require extra payment over basic postage; e.g., certified mail, business reply mail, registered mail, insurance, merchandise return service, certificates of mailing, return receipts, and delivery confirmation.

Unauthorized use of agency postage means the use of penalty or commercial mail stamps, meter impressions, or other postage indicia for personal or unofficial use.

Worksharing means cost-effective ways of processing outgoing mail that qualify for reduced postage rates; examples include presorting, bar coding, consolidating, and commingling.

§ 102–192.40 Where can I get more information about the classes of mail?

Details about mail classes can be found in the Domestic Mail Manual (DMM). The DMM is available from New Orders, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, *http://pe.usps.gov/.*

§ 102–192.45 How do we request a deviation from these requirements, and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Subpart B—General Requirements

§ 102–192.50 What must all agencies do to manage their mail effectively and efficiently?

All agencies are required to:

(a) Have written security plans for mail operations at the agency level and in any facility where one or more full time personnel processes mail.

(b) Ensure that mail costs are identified at the program level within the agency; each agency will have to determine the appropriate level for this requirement because the level at which it is cost-beneficial differs widely. Program level costs can be identified from tracking mailing expenses by program areas, cost estimates, financial reports, reconciled Postal Service records, and reconciled vendor data.

(c) Beginning October 1, 2003, all payments to the United States Postal Service must be made using commercial payment processes, not OMAS.

(d) Have performance measures for mail operations at the agency level and in all subordinate locations that spend more than $250,000 per year on postage; it is up to each agency to select the actual performance measures used.

§ 192.55 What are the additional requirements for large agencies?

All agencies that spend more than $1 million per year on postage are additionally required to develop and maintain an annual mail management and security plan. The plan must:

(a) State total amounts paid to all service providers;

(b) Verify that facility security plans have been reviewed at the agency level. A copy of at least one large facility plan must be attached;

(c) Identify performance measures in use at the agency level;

(d) Identify the agency mail manager; and

(e) Describe the agency's plans to improve the economy and efficiency of mail operations.

Subpart C—Reporting Requirements

§ 102–192.60 What must we report to GSA about our mail operations?

If you meet the definition of a large agency (see § 102–192.35), you must report to GSA annually either your mail management and security plan, revised section(s) of that plan, or a statement verifying that your plan has been reviewed and that there are no changes to it. The annual report must state that all facility security plans have been reviewed by a competent authority within the past year.

§ 102–192.65 When must we submit reports to GSA about our mail?

If you meet the requirement in § 102–192.35, the first annual agency mail management and security plan to GSA covering Fiscal Year 2001 is due September 4, 2002. Thereafter, fiscal year reports will be due annually on March 30. You must promptly report the name of the agency mail manager whenever it changes. GSA maintains an updated list of Federal agency mail managers at *http://www.gsa.gov/mailpolicy.*

§ 102–192.70 What format should we use when reporting mail data to GSA?

GSA will provide the format and reporting process for submitting the agency's annual mail management and security plan. These will be developed in collaboration with the Interagency Mail Policy Council. The final reporting format will be posted on the Mail Policy Communications home page at *http://www.gsa.gov/mailpolicy.*

§ 102–192.75 Where do we send our mail management reports and security plan verifications?

Submit hardcopy mail reports to: General Services Administration, Office of Governmentwide Policy, Mail Communications Policy Division (MTM), 1800 F Street, NW., STE 1221, Washington, DC 20405–0002. Electronic submissions are encouraged. Submit electronic reports to: *federal.mail@gsa.gov.*

§ 102–192.80 Why does GSA require these mail reports?

GSA requires these annual agency mail management and security plans to:

(a) Ensure that the large Federal mail programs have the tools and procedures in place to manage their operations efficiently and effectively;

(b) Ensure that appropriate security measures are in place; and

(c) Allow GSA to fulfill its responsibilities under the Federal Records Act, especially with regards to sharing best practices, training, standards, and guidelines.

Subpart D—Security Provisions

§ 102–192.85 Must I have a mail security plan?

Every Federal agency and agency location where an agency has one or more full time personnel processing mail must implement a written mail security plan. The size and scope of the security plan should be commensurate with the size and responsibilities of each agency or location. The security plan should be updated whenever circumstances warrant. As a minimum, it should be reviewed annually.

§ 102–192.90 What must I include in the mail security plan?

Your security plan must include polices and procedures for safe and secure operations consistent with your agency's core mission. It must also include:

(a) Procedures for handling all incoming mail, regardless of service provider;

(b) Plans for security training for mail center personnel;

(c) Procedures for ensuring compliance with the standards

established by the Interagency Security Committee that was established in accordance with Executive Order 12977, dated October 19, 1995 (3 CFR, 1995 Comp., p. 413). These standards can be found at *http://www.oca.gsa.gov;*

(d) A list of all large facilities, their points of contact and telephone numbers; and

(e) Plans for annual reviews of the agency's security plan and facility-level security plans.

§ 102–192.95 What else should I include in the mail security plan?

Additionally, your plan should ensure that:

(a) Facility mail managers participate in their building security committees, wherever such committees exist;

(b) Mail is transported in a safe manner;

(c) X-raying of mail occurs where appropriate; and

(d) The standards outlined in appendix B to this part are implemented.

Subpart E—Recommended Actions

§ 102–192.100 What financial system features does GSA recommend for finance systems to keep track of mail costs?

Agencies should develop or use a financial accountability system that separately tracks all mail costs to the program area or below. The system should:

(a) Show allocations and expenses for postage and all other mail costs (*e.g.,* payments to service providers, mail center personnel costs, mail center overhead, *etc.*) separate from all other administrative expenses;

(b) Assign control of funds for postage to the same person who has overall authority to control mail decisions for the program area;

(c) Allow mail centers to establish systems to charge their customers for postage; and

(d) Identify and charge mail costs that are part of printing contracts to the program level.

§ 102–192.105 What performance goals and measures should we use?

Section 102–192.50 requires all large agencies to have performance measures for mail operations at the agency level and in all subordinate locations that spend more than $250,000 per year on postage. All other agencies are also encouraged to identify performance goals and measures for incoming and outgoing mail operations. Your performance measurement efforts should be focused on the large facilities that generate most of your mail. The range of measures will depend on the size of your agency or facility, your mission, and the life cycle cost of data collection. GSA will provide suggested performance measures through its mail policy website.

§ 102–192.110 What should your agency-wide mail management plan include?

Your agency-wide mail management plan should address:

(a) The ways in which mail management supports your agency's mission;

(b) Information about your agency's primary facilities;

(c) Opportunities for reducing costs and/or enhancing your agency's ability to perform its mission through better mail management;

(d) How you choose the lowest cost and/or best value service provider(s) for outgoing mail, while ensuring that the Private Express Statutes and all USPS regulations are followed;

(e) Opportunities for centralized mail processing, worksharing, consolidation, and commingling to obtain postage savings;

(f) How and to what extent you will move toward ensuring that the person who controls mail decisions is the same person who controls the funds for postage;

(g) How and to what extent you will move toward ensuring that your financial systems show allocations and expenses for postage and all other mail costs separately from all other administrative expenses; and

(h) How you are developing specific performance goals, maintaining performance data systems and relating mail management goals to your agency's mission-related goals.

§ 102–192.115 What less costly alternatives to expedited mail and couriers should your agency-wide mail management plan address?

Your plan should address the following alternatives to expedited mail and couriers:

(a) First Class and Priority Mail from the USPS;

(b) Package delivery services from other service providers; and

(c) Electronic transmission via e-mail, facsimile transmission, electronic commerce, the Internet, etc.

Subpart F—Agency Mail Manager Responsibilities

§ 102–192.120 What is the appropriate managerial level for an agency mail manager?

The agency mail manager should be at a managerial level that enables him or her to fulfill the requirements of §§ 102–192.50 through 102–192.65 and § 102–192.125.

§ 102–192.125 What are my general responsibilities as an agency mail manager?

In addition to carrying out the responsibilities in § 192.50, an agency mail manager should:

(a) Establish written policies and procedures to provide timely and cost effective dispatch and delivery of mail;

(b) Ensure agency-wide awareness and compliance with standards and operational procedures established by all service providers used by the agency;

(c) Monitor the agency's mailings and other mail management activities, especially expedited mail, mass mailings, mailing lists, and couriers, and seek opportunities to implement cost-effective improvements and/or to enhance performance of the agency's mission;

(d) Develop and direct agency programs and plans for proper and cost-effective use of transportation, equipment, and supplies used for mail;

(e) Although not required for other than large agencies, develop, implement and provide to GSA the agency's annual mail management and mail security plan (see subpart C) of this part;

(f) Ensure that facility mail managers receive the training they need to perform their assigned duties;

(g) Ensure that users at the program level receive the training needed to reduce, track and budget for their mailing expenses;

(h) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39 U.S.C. 601–606) and when necessary and cost-effective;

(i) Establish written policies and procedures to minimize personal mail in incoming, outgoing, and internal agency mail;

Note to paragraph (i): An agency may decide to accept and process personal mail for personnel living on a Federal facility, personnel stationed outside the United States, or personnel in other situations who would otherwise suffer hardship. Mailing costs associated with filing travel vouchers and payment of Government sponsored charge card billings are considered as ''incidental expenses'' as defined in the ''Per Diem Allowance'' in the Federal Travel Regulations (41 CFR 300–3.1).

(j) Establish and maintain a system that tracks the financial and other performance data discussed in §§ 102–192.50 and 102–192.100;

(k) Work with agency executives to ensure that, to the maximum practical extent, the person who makes the decision to mail any significant number of pieces of mail is the same person who controls the funds for postage;

(l) Work with agency accounting personnel to ensure that financial

systems show allocations and expenses for postage and all other mail costs separately from all other administrative expenses; and

(m) Ensure that bills from all service providers are reconciled and paid on a timely basis.

Subpart G—Facility Mail Manager Responsibilities

§ 102–192.130 What are my general responsibilities as a facility mail manager?

As a Federal facility mail manager you should:

(a) Implement policies and procedures developed by the agency mail manager, including cost control procedures;

(b) Work to improve, streamline, and reduce the cost of mail practices and procedures by continually reviewing work processes throughout the facility and seeking opportunities for cost-effective change;

(c) Work closely with all facility personnel, especially the program level users who develop large mailings, to minimize postage and associated printing expenses through improved mail piece design, mail list management, electronic transmission of data in lieu of mail, and other appropriate measures; keeping current on new technologies that could be applied to reduce your mailing costs;

(d) Work with local managers to ensure that, to the maximum practical extent, the person who makes the decision to mail any significant number of pieces of mail is the same person who controls the funds for postage;

(e) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39 U.S.C. 601–606) and when necessary and cost-effective;

(f) Provide centralized control of all mail processing activities at the facility, including all regularly scheduled, small package, and expedited service providers, couriers, equipment and personnel;

(g) Review unauthorized use, loss, or theft of postage, including any unauthorized use of penalty or commercial mail stamps, meter impressions or other postage indicia, and immediately report such incidents to the agency Inspector General, internal security office, or other appropriate authority;

(h) Provide training opportunities for all levels of agency personnel at the facility on cost-effective mailing practices for incoming, outgoing, internal mail and security;

(i) Ensure that outgoing mail meets all the standards established by your service provider(s) for weight, size, hazardous materials content, etc.;

(j) Produce and implement an agency mail management and mail security plan; and

(k) Respond to the requirements of this part.

§ 102–192.135 What should I include when contracting out all or part of the mail function?

Any contract for a mail function should require compliance with:

(a) This part;

(b) The Private Express Statutes (39 U.S.C. 601–606); and

(c) All agency policies, procedures, and plans, including the agency wide mail management and mail security plan and, if applicable, facility mail security plans.

Subpart H—Program-Level Mail Responsibilities

§ 102–192.140 Which program levels should have a mail manager?

Every program level within a Federal agency that generates a significant quantity of outgoing mail should have a mail manager at the program level. It is up to each agency to decide which programs will have a full-time or part-time mail manager. In making this determination, the agency should consider the total volume of outgoing mail that is put into the mail stream by the program itself or by a printer, presort contractor, or other contractor on the program's behalf.

§ 102–192.145 What are the mail responsibilities at the program level?

Your responsibilities at the program level include:

(a) Ensuring that your program complies with all applicable mail policies and procedures, including this part;

(b) Working closely with your program personnel to minimize postage and associated printing expenses through improved mail piece design, mail list management, electronic transmission of data in lieu of mail, and other appropriate measures;

(c) Keeping current on new technologies and practices that could reduce your mailing costs and/or make your use of mail more effective;

(d) Coordinating all of your program's large mailings and print jobs to ensure that the most efficient and effective procedures are used;

(e) Providing training opportunities to your program personnel; and

(f) Working closely with the agency mail manager, mail managers at all agency facilities that handle significant quantities of mail or print functions for your program, and mail technical experts.

Subpart I—GSA's Responsibilities and Services

§ 102–192.150 What are GSA's responsibilities in mail management?

Under the Federal Records Management Amendments of 1976, as amended (44 U.S.C 2904), GSA is required to provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies (mail is one type of record, according to the Act). In carrying out its responsibilities under the Act, GSA is required to:

(a) Promulgate standards, procedures, and guidelines;

(b) Conduct research to improve practices and programs;

(c) Collect and disseminate information on training programs, technological developments, etc.;

(d) Establish an interagency committee (*i.e.,* the Interagency Mail Policy Council) to provide an exchange of information among Federal agencies;

(e) Conduct studies, inspections, or surveys;

(f) Promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies; and

(g) In the event of an emergency, communicate with agencies.

§ 102–192.155 What types of support does GSA offer to Federal agency mail management programs?

GSA supports Federal agency mail management programs by:

(a) Assisting development of agency policy and guidance in mail management and mail operations;

(b) Identifying better business practices and sharing them with Federal agencies;

(c) Developing and providing access to a Governmentwide management information system for mail;

(d) Helping agencies develop performance measures and management information systems for mail;

(e) Maintaining a current list of Agency Mail Managers;

(f) Establishing, developing and maintaining interagency mail committees;

(g) Maintaining liaison with the USPS and other service providers at the national level;

(h) Maintaining a website for mail communications policy; and

(i) Serving as a point of contact for mail issues. You may also contact GSA at: General Services Administration, Office of Governmentwide Policy, Mail Communications Policy Division (MTM), 1800 F Street, NW., STE 1221,

Washington, DC 20405; e-mail: *federal.mail@gsa.gov.*

Appendix A To Part 102–192—Large Agency Mailers

As of December 2000, the following 26 large agencies met the definition of ''large agency'' in § 102–192.35:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Treasury
Department of Veterans Affairs
Environmental Protection Agency
Equal Employment Opportunity
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
General Services Administration
Government Printing Office
Library Of Congress
National Aeronautics and Space Administration
National Science Foundation
Small Business Administration
Smithsonian Institution
Social Security Administration

Appendix B To Part 102–192—Mail Center Security Plan

Introduction

I. The mail center is a major gateway into any business or government agency. Each day, the typical mail center handles hundreds or thousands of items from routine letters to confidential documents, high value parcels, and even money. Security is critical for this critical nerve center. An effective mail center security program should address:

A. Risk Analysis
B. Employee Safety
C. Physical Security
D. Inbound Mail Procedures
E. Postage Security
F. Contractors
G. Continuity of Operations Planning
H. Communications
I. Training
J. Plan Review

II. Some agencies have satellite locations with no official mail centers. Responsibilities for processing mail are divided among administrative and support staff. Although the security plan for mail operations may be limited for these smaller sites, each of the sections A. through J. of the appendix should be adopted when appropriate.

III. A strong plan supplemented with regular training and reviews will help instill a culture that emphasizes the importance of good security. Maximize the success of the security plan by involving all members of your team—managers, employees, security managers and union representatives—during development.

A. Risk Analysis

The first step in effective security is to conduct a risk analysis for your mail operation. While there are minimum standards that every agency should follow, your particular posture should reflect the mission of your agency.

B. Employee Safety

The anthrax attacks reminded us all how important employee safety is. We do not know whether there will be another attack, so we should take the proper steps to ensure the safety of our employees.

1. Personal protection equipment should be made available for all employees. These include gloves and masks. When using any form of respiratory equipment, the manager must make sure that proper OSHA standards are met. *See* appendix D of OSHA's Respiratory Protection standard for information about the use of respirators when such use is voluntary (29 CFR 1910.134, appendix D).

2. Also, instruct employees to wash hands regularly with soap and water. At a minimum, hands should be washed when gloves are removed, before eating, and at the end of a shift.

C. Physical Security

Managers need to address the physical security of the mail center.

1. Place the mail center in an enclosed room, with defined points of entry. Limit access to those employees who work in the mail center, or who have immediate need for access, such as known couriers.

2. Where appropriate, install controlled access equipment; key control, card readers or buzz entry are a few options. Additionally, each access point should be alarmed and monitored for after hours activity. Secure areas, such as safes or locked cabinets, should be established inside the mail center for meters, express shipments and valuables.

3. Managers should draft detailed procedures for opening and closing the mail center. Logs with checklists should be posted and signed daily.

D. Inbound Mail Procedures

1. The inbound mail operation should be separate from the rest of the mail center. All incoming mail should be isolated in an area where it can be inspected. Delivery personnel should have limited access to the facility and should be serviced at a counter.

2. Establish a closed-loop manifest system for all accountable letters and packages (e.g., certified mail, UPS, FedEx). Verify the delivery manifest sheet to ensure that you have received all packages listed. All accountable mail should be signed for whenever possession changes. Always require a signature at the final point of delivery. File copies of the manifest by date.

3. If possible, acquire an x-ray machine to scan mail. All mail, regardless of carrier, should be x-rayed. If volume does not permit this, x-ray all packages.

4. Mail center employees should be trained to recognize and report suspicious packages. Characteristics of a suspicious package or letter can vary depending upon the type of mail your operation regularly processes (see http://www.fbi.gov/pressrel/pressrel01/mail3.pdf for more information).

E. Postage Security

Postage theft is a Federal offense and managers should be proactive in this area.

1. Managers should integrate accounting procedures for all forms of postage—meters, stamps and permits. Meter logs must be accurately kept, and meters should be locked when not in use. Where feasible, the meter should be removed from the equipment and stored in a locked cabinet during off-hours.

2. Establish additional controls to ensure proper access and accountability for permit envelopes and labels. Controls should be established for stamps and other carriers as well.

F. Contractors

Some agencies use contractors to process their mail. This could be either an outsource provider that runs your mail center or a lettershop that handles your presort. It's important to remember that security of the mail is still the responsibility of the agency. Include the key points from your security plan in every contract, and conduct periodic reviews separate from the contract process.

G. Continuity of Operations Planning

1. Managers should have a written continuity of operations plan (COOP) to deal with emergency situations. The plan should include:

a. Name(s) of Mail Security Coordinator/Response Team
b. Procedures on how to respond to a threat or incident
c. Who to contact in the event of an emergency
d. Location and contents of ''fly-away kit''
e. Location/phone numbers of backup facility
f. A list of critical documents and mail required for the agency to complete its mission

2. Copies of this plan should be stored in easily accessible areas, including off-site.

3. Also, you need to test the plan on a quarterly basis. Verify that all the information is up-to-date, that contacts, facilities access, and the call trees are correct.

H. Communications

A good communications program is part of any successful mail operation and is critical for security issues. Make sure that the information being shared is factual, not opinion, and verify that it is up-to-date.

1. Schedule regular meetings with a representative from the senior management of your agency (Executive Secretariat, Administrator, *etc.*). Review the steps you've taken to secure the mail, and address any outstanding issues.

2. Develop a communications plan to be executed when responding to a threat. This plan should cover how to both acquire and distribute information. Prepare a list of trusted resources to acquire timely and accurate information (*e.g.*, GSA, USPS, CDC, *etc.*). Organize a protocol for the approval and distribution of information on the status of the mail operation.

I. Training

Education and awareness are the essential ingredients to preparedness. Employees must remain aware of their surroundings and the packages they handle. You must carefully design and vigorously monitor your security program to reduce the risk for all.

1. Through training you can develop a culture of security awareness in your operation. Essential to ensuring employee confidence in their safety is the inclusion of union representatives or other employee representatives in developing and giving training. Managers should consider security training a critical element of their job.

2. A complete training program will include:

a. Basic security procedures;

b. Recognizing and reporting suspicious packages;

c. Proper use of personal protection equipment;

d. Responding to a biological threat; and

e. Responding to a bomb threat.

3. Maintain a log of all employees and training attended, including the date completed. Follow up with refresher training on a regular basis.

4. In addition to educating the employees who work for you, you must educate all employees who work in the facility on best mail practices including security measures. Employee awareness of the measures you have taken leads to confidence in the safety of the packages that are delivered to their desktops.

J. Plan Review

The General Services Administration strongly recommends external review of your security plan. This may include a review by a consultant, your agency security department, or a peer review.

Dated: May 16, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–13834 Filed 6–5–02; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 95–177; FCC 02–135]

Biomedical Telemetry Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This document dismisses a petition for reconsideration filed by the Cellular Phone Taskforce concerning the effects of radio frequency radiation on ''electrosensitive'' individuals, and denies a petition for partial reconsideration concerning separation distances filed by the National Association of Broadcasters.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 95–177, FCC 02–135, adopted May 2, 2002, and released May 13, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Memorandum Opinion and Order

1. In October 1997, the Commission adopted a Report and Order (R&O) that increased the maximum permitted signal strength for medical telemetry transmitters operating in the broadcast television bands under Part 15 of the rules. The R&O also permitted these devices to operate on TV channels 14–46 in addition to TV channels 7–13 where they already were permitted to operate. To prevent interference to TV broadcast signals, minimum required separation distances were established between medical telemetry transmitters and the Grade B contours of co-channel analog TV stations. No separation distances were proposed or established between medical telemetry transmitters and the noise limited service contours of digital TV stations, but medical telemetry transmitters must operate on a non-interference basis to digital TV and to all other authorized services.

2. Two parties filed petitions for reconsideration of the rules adopted in the R&O. The Cellular Phone Taskforce (CPT) claims that the transmission levels permitted in the rules are too high and are therefore discriminatory because they will adversely affect persons who are extremely sensitive to electromagnetic fields. The National Association of Broadcasters (NAB) claims that the rules do not provide adequate protection to analog TV broadcast signals from interference caused by medical telemetry transmitters. NAB states that we used a desired-to-undesired (D/U) signal ratio that was too low in calculating the minimum required separation distances between medical telemetry transmitters and the Grade B contours of co-channel TV stations. NAB's petition did not address the issue of protecting digital TV signals from interference by medical telemetry equipment.

3. Prior to the adoption of the Report and Order in this proceeding, the Commission addressed in another proceeding CPT's arguments that stringent standards for RF emissions should be established to protect persons who are adversely affected by exposure to low-level electromagnetic fields. More specifically, in 1996, CPT filed a petition for reconsideration in ET Docket 93–62, which adopted new guidelines and methods for evaluating the environmental effects of radio frequency (RF) radiation from FCC-regulated transmitters. CPT's petition in that proceeding argued that stricter RF emission limits were necessary to protect persons who are ''electrosensitive.'' The Commission denied CPT's petition on August 25, 1997, stating that the RF safety rules adopted in that proceeding were based on the recommendations of expert organizations and federal agencies with responsibilities for health and safety, and that it was not practicable for the Commission to independently evaluate studies of biological effects, especially concerning controversial issues such as whether some persons are ''electrosensitive.'' CPT appealed the Commission's decision in ET Docket 93–62 at the same time it petitioned for reconsideration of the Commission's decision in this proceeding. The Court affirmed the Commission's decision to rely on standards formulated by expert organizations and agencies. In denying a rehearing, the Court specifically concluded, in response to CPT's claims of discrimination against handicapped persons, that the American with Disabilities Act (42 U.S.C. 12101 *et seq.*) did not apply to the Commission's decision and that arguments made under the Rehabilitation Act (29 U.S.C. 701 *et seq.*) were without merit. Because the essence of CPT's arguments here have already been addressed by the Commission in ET Docket 93–62 and the Commission's decision in that proceeding has been affirmed on appeal, we are dismissing CPT's petition for reconsideration in this proceeding.

4. We find that the 45 dB D/U signal ratio we selected to determine the required separation distances between medical telemetry transmitters and TV grade B contours is appropriate. This ratio was originally adopted by the Commission in 1952 to protect TV stations from interference from co-channel TV stations at the Grade B

contour. It is specified in Part 74 of the Commission rules to protect analog TV signals from co-channel interference from low power TV, TV translator or TV booster stations. This ratio provides greater protection than the 34 dB ratio specified in Part 73 to protect analog TV signals from interference from digital TV signals. We find that the D/U ratios recommended by National Association of Broadcasters are overly protective and thus affirm our decision to base the separation rules on a 45 dB D/U ratio.

5. While we find that the rules we adopted are adequate to prevent interference, we also note that recent Commission actions will serve to reduce the number of medical telemetry users in the TV bands. Subsequent to this proceeding, the Commission allocated three new frequency bands where medical telemetry can operate on a primary basis. In allocating these bands, our goal was not only to provide spectrum where medical telemetry can operate without interference, but also to encourage medical telemetry users to migrate out of the current bands. To accomplish this transition, the Commission will cease approving medical telemetry equipment that can operate in the TV bands starting October 16, 2002. While there is no cutoff on the marketing and use of medical telemetry equipment approved prior to that date, we expect that the use of medical telemetry equipment in the TV bands will gradually cease as equipment that operates in the newly allocated bands is deployed to replace older equipment.

6. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r), the Petition for Reconsideration filed by the Cellular Phone Taskforce *is dismissed.*

7. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r), the Petition for Partial Reconsideration filed by the National Association of Broadcasters *is denied.*

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Report and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14173 Filed 6–5–02; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813 and 1852

RIN 2700–AC33

Non-Commercial Representations and Certifications and Evaluation Provisions for Use in Simplified Acquisitions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NFS to provide a consolidated set of representations and certifications and an evaluation provision for the acquisition of non-commercial items within the simplified acquisition threshold.

EFFECTIVE DATE: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–1645 or e-mail: cdalton@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Currently for commercial acquisitions, FAR provision 52.212–3, Offeror Representations and Certifications—Commercial Items, provides a consolidated set of representations and certifications. No equivalent provision exists for non-commercial items. This final rule provides an equivalent provision for use with NASA's non-commercial acquisitions within the simplified acquisition threshold (SAT). This new consolidated provision will ensure that all appropriate representations and certifications are consistently used and will simplify the incorporation of representation and certification into solicitations. Additionally, this final rule provides an evaluation provision to be used in non-commercial acquisitions within the SAT when selection is based on other than technically acceptable low offer. This evaluation provision will provide a consistent notice to offerors of how evaluations will be conducted.

NASA published a proposed rule in the **Federal Register** on January 25, 2002 (67 FR 3669–3673). Two respondents submitted comments on the proposed rule. One respondent was generally supportive of the proposed rule. The other respondent's comments indicated a lack of understanding that this change is merely a consolidation of existing requirements and not an imposition of additional requirements. The comments received were considered in formulation of this final rule. While no changes are being made as a result of comments received, changes are being made for consistency with existing FAR provisions. Changes made include removal of the Trade Agreements Certificate since it does not apply to acquisitions within the SAT; removal of the definition of ''woman-owned business'' since 52.219–1 no longer has this category; replacing ''place of ownership'' with ''office'' under the HUBZone certification as a result of changes made to 52.219–1 in FAC 01–06; and editorial changes at 1813.302–570(a)(2) for consistency of formatting and at 1852.213–70(c)(6)(i) and 1852.217–70(c)(6)(ii) for clarity.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 USC 601, *et seq.*), because this rule merely consolidates within one provision existing FAR representations and certifications for use in non-commercial simplified acquisitions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these changes to the NFS do not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 USC 3501, *et seq.*

List of Subjects in 48 CFR Parts 1813 and 1852

Government Procurement.

Scott Thompson,

Acting Assistant Administrator for Procurement.

Accordingly, 48 CFR Part 1813 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1813 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

2. Add section 1813.302–570 to read as follows:

1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the

mircro-purchase threshold that are for other than commercial items. This provision shall not be used for acquisitions conducted under FAR 13.5.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer.

(i) Use the provision with its Alternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4).

(ii) Use the provision with its Alternate II in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3).

(iii) Use the provision with its Alternate III in solicitation which include the clause at FAR 52.227–14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when evaluation factors are to be included for evaluation and the selection will be based upon best value, rather than technically acceptable, low price. (See FAR 13.106.)

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add sections 1852.213–70 and 1852.213–71 to read as follows:

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

Offeror Representations and Certifications—Other Than Commercial Items—(JUN 2002)

(a) Definitions. As used in this provision—

''Emerging small business'' means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

''Service-disabled veteran-owned small business concern''—Means a small business concern—

(1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

''Small business concern'' means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

''Veteran-owned small business concern'' means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

''Women-owned small business concern'' means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

TIN_____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness

Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
__50 or fewer	__$1 million or less.
__51–100	__$1,000,001–$2 million.
__101–250	__$2,000,001–$3.5 million.
__251–500	__$3,500,001–$5 million.
__501–750	__$5,000,001–$10 million.
__751–1000	__$10,000,001–$17 million.
__Over 1000	__Over $17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) [The offeror shall check the category in which its ownership falls]:

__ Black American.
__ Hispanic American.
__ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
__ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
__ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
__ Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act—Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—Balance of Payments Program—Supplies'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No. and Country of Origin

_____
_____
_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(f)(1) Buy American Act—North American Free Trade Agreement— Israeli Trade Act—Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act— North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'': NAFTA Country or Israeli End Products:

Line Item No. and Country of Origin

_____
_____
_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.'' The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No. and Country of Origin

_____
_____
_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I. If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian End Products:

Line Item No.

_____
_____
_____

(List as necessary)

(3) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II. If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade

Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian or Israeli End Products:

Line Item No. and Country of Origin

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line Item No. and Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at FAR 22.1503(b).]

(1) Listed end products.

Listed End Product and Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

Alternate I—Jun 2002

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

Alternate II—Jun 2002

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College or University and Minority Institution Representation

(1) Definitions. As used in this provision—

''Historically black college or university'' means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institution'' means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) Representation. The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

Alternate III—Jun 2002

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation of Limited Rights Data and Restricted Computer Software

(1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at FAR 52.227–16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at FAR 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at FAR 52.227–14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: ''Limited rights data'' and ''Restricted computer software'' are defined in the contract clause entitled ''Rights in Data-General.''

1852.213–71 Evaluation—Other Than Commercial Items.

As prescribed in 1813.302–570(b) insert the following provision:

Evaluation—Other Than Commercial Items—Jun 2002

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the

option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[FR Doc. 02–14162 Filed 6–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1847 and 1852

RIN 2700–AC33

Shipment by Government Bills of Lading

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This is an interim rule amending the NASA FAR Supplement (NFS) to specify that shipment by Government Bills of Lading (GBLs) may only be used to ship international and domestic overseas items deliverable under contracts. All other shipments shall be made via Commercial Bills of Lading (CBLs).

DATES: *Effective Date:* This interim rule is effective June 6, 2002.

Applicability Date: This amendment applies to all contracts awarded on or after the effective date.

Comment Date: Comments should be submitted to NASA at the address below on or before August 5, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to *lbecker@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Lou Becker, (202) 358–4593, or *lbecker@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Effective March 31, 2002, the General Services Administration (GSA) is retiring the use of Optional Form 1103, U.S. Government Bill of Lading (GBL) and Optional Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (PPGBL) for domestic shipments. This interim rule amends the NFS to comply with Federal Management Regulation (FMR) Part 102–117 (41 CFR 102–117), Transportation Management, published in the Federal Register on October 6, 2000 (65 FR 60060), and FMR Part 102–118 (41 CFR 102–118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568). NASA clause 1852.247–73 is revised to change the title to ''Bills of Lading,'' and indicate that GBLs may only be used to ship international and domestic overseas items deliverable under contracts, and all other domestic shipments shall be made via Commercial Bills of Lading (CBL).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change only affects contracts where the point of delivery for domestic shipments of items deliverable under a contract is f.o.b. origin.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information for offerors, contractors, or members of the public which require the approval of the Office of Management and Budget.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to amend shipping instructions that are now obsolete as a result of changes to the Federal Management Regulation (FMR) Part 102–117 (41 CFR 102–117), Transportation Management, published in the **Federal Register** on October 6, 2000 (65 FR 60060), and FMR Part 102–118 (41 CFR 102–118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568).

List of Subjects in 48 CFR Parts 1847 and 1852

Government Procurement.

Scott Thompson,

Acting Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1847 and 1852 are amended as follows:

1. The authority citation of 48 CFR Parts 1847 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1847—TRANSPORTATION

2. In section 1847.305–70, revise paragraph (b) to read as follows:

1847.305–70 NASA contract clauses.

* * * * *

(b) The contracting officer shall insert a clause substantially as stated at 1852.247–73, Bills of Lading, in f.o.b. origin solicitations and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 1852.247–73 to read as follows:

1852.247–73 Bills of Lading.

As prescribed in 1847.305–70(b), insert a clause substantially as follows:

Bills of Lading (JUN 2002)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

''I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____''.

(b) *Government Bills of Lading.* (1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, ''domestic overseas'' means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(i) Item identification/ description.
(ii) Origin and destination.
(iii) Individual and total weights.
(iv) Dimensional Weight.
(v) Dimensions and total cubic footage.
(vi) Total number of pieces.
(vii) Total dollar value.
(viii) Other pertinent data.
(End of clause)

[FR Doc. 02–14161 Filed 6–5–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 053102C]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period

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

ACTION: Closure.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 2 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3′ N. lat. for the remainder of the 2002 Quarter 2 quota period (through June 30, 2002). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N. lat.

DATES: Effective 0001 hrs local time, June 7, 2002, through 2400 hrs local time, June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods, based upon percentages of the annual quota. The Quarter 2 (April through June) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The total commercial quota for black sea bass for the 2002 calendar year was initially set at 3,332,000 lb (1,511,370 kg) and then adjusted downward to 3,294,758 lb (1,494,477 kg) for research quota set-asides (66 FR 66351; December 26, 2001). The Quarter 2 period quota, which is equal to 29.26 percent of the annual commercial quota, is 964,046 lb (437,284 kg). The quota allocation was adjusted downward to compensate for 2001 Quarter 2 landings in excess of the 2001 Quarter 2 quota, consistent with the procedures in § 648.140. The final adjusted 2002 Quarter 2 quota is 856,208 lb (388,369 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period by means of dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 2 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2002 Quarter 2 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree, as a condition of the permit, not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for black sea bass is available. The Regional Administrator has determined that the Quarter 2 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, June 7, 2002, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., by vessels holding commercial Federal fisheries permits are prohibited through June 30, 2002. The 2002 Quarter 3 period for commercial black sea bass harvest will open on July 1, 2002. Effective June 7, 2002, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat., for the remainder of the Quarter 2 period (through June 30, 2002).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: May 21, 2002.

John H. Dunnigan,

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

[FR Doc. 02–14212 Filed 6–3–02; 3:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127–02; I.D. 110701D]

RIN 0648–AP59

Fisheries of the Northeastern United States; Final 2002 Specifications for the Atlantic Bluefish Fishery

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

ACTION: Final 2002 specifications for the Atlantic bluefish fishery.

SUMMARY: NMFS issues 2002 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and a recreational harvest limit and possession limit for Atlantic bluefish off the east coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Effective June 6, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Preliminary Regulatory Economic Evaluation (PREE), Final Regulatory Flexibility Analysis (FRFA) and Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA, PREE, FRFA, EFHA, and Small Entity Compliance Guide are accessible via the Internet at *http://www.nmfs.gov/ro/doc/nero.html*. The Small Business Compliance Guide is also available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, Total Allowable Landings (TAL), which is composed of a commercial quota and recreational harvest limit. A proposed rule to implement the 2002 bluefish specifications was published in the **Federal Register** on March 13, 2002 (67 FR 11276) with a comment period ending March 28, 2002.

Final Specifications

2002 TAL

For the 2002 fishery, the stock rebuilding program in the FMP would restrict F to 0.41. However, the 2000 fishery produced an F of only 0.326. So, in accordance with the FMP, the TAL proposed for 2002 is set to achieve F=0.326. The resulting Total Allowable Catch (TAC) is 29.1 million lb (13.2 million kg). The TAL is calculated by deducting discards, estimated at 2.2 million lb (0.99 million kg) for 2002, from the TAC. Therefore, the TAL for 2002 is 26.866 million lb (12.19 million kg).

2002 Commercial Quotas and Recreational Harvest Limits

If the TAL for the 2002 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 4.567 million lb (2.07 million kg)(17 percent) with a recreational harvest limit of 22.299 million lb (10.12 million kg)(83 percent). However, recreational landings from the last several years were much lower than the recreational allocation for 2002, ranging between 8.30 and 14.3 million lb (3.76 and 6.49 million kg). Since the recreational fishery is not projected to land a 22.299 million-lb (10.12 million-kg) harvest limit in 2002, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). NMFS is transferring 5.933 million lb (2.677 million kg) from the initial 2002 recreational allocation of 22.299 million lb (10.12 million kg), resulting in 16.365 million lb (7.42 million kg) allocated for the 2002 recreational harvest limit and a commercial quota of 10.5 million lb (4.76 million kg). The 2002 commercial quota is an increase from the 2001 quota (9.58 million lb (4.35 million kg)) implemented by NMFS and the states under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. The recreational possession limit of 15 fish per person is unchanged from 2001. The proposed specifications included a 2–percent TAL set aside. A Request for Proposals was published to solicit proposals for 2002, based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). No proposals were approved that would utilize the bluefish research TAL. Therefore, for the 2002 fishery, the research TAL is restored to the overall TAL. The 2002 state commercial quotas are listed in the table below.

State	% of quota	2002 Commercial Quota (lb)	2002 Commercial Quota (kg)
ME	0.6685	70,193	31,839
NH	0.4145	43,523	19,741
MA	6.7167	705,254	319,898
RI	6.8081	714,851	324,251
CT	1.2663	132,962	60,310
NY	10.3851	1,090,436	494,613
NJ	14.8162	1,555,701	705,654
DE	1.8782	197,211	89,453
MD	3.0018	315,189	142,967
VA	11.8795	1,247,348	565,787
NC	32.0608	3,366,384	1,526,966
SC	0.0352	3,696	1,676
GA	0.0095	998	452
FL	10.0597	1,056,269	479,115
Total	100.0000	10,500,000	4,762,720

Comments and Responses

Ten sets of public comments were received on the proposed rule: nine from recreational fishermen and one from a recreational fishing association.

Comment 1: Several commentors stated that recreational fishermen have participated in a catch-and-release program to reduce pressure on the bluefish stock. They are of the opinion that it is not fair to transfer poundage from the recreational harvest limit to the commercial quota because doing so means that catch-and-release efforts result in an increased commercial quota.

Response 1: The poundage transfer provision was included in Amendment

1 to the FMP (Amendment 1) to ensure that commercial landings would not be unnecessarily reduced if the recreational fishery is not expected to attain its harvest limit. The 83 percent/17 percent (recreational/commercial) allocation adopted by the Council in Amendment 1 is based on average catch composition for the 1981–1989 fisheries. However, the average catch composition for the 1990–1996 fisheries was 64 percent/36 percent with an average of 10.5 million lb (4.76 million kg) per year in commercial landings over that period. Therefore, a 10.5 million-lb (4.76 million-kg) maximum allowable commercial allocation does not represent a substantial increase from landings in the recent commercial fishery. The relatively high percentage of commercial landings to recreational landings in the 1990–96 fishery was a result of decreased recreational landings over that period. Information is not available to determine if the decrease in recreational landings from 1990–1996 is a result of catch-and-release programs, a change in targeted species, such as striped bass, or other factors.

Comment 2: Several commentors stated that, even if the recreational harvest limit has not been met, there is no reason to transfer quota from the recreational harvest limit to the commercial quota. The commenters believe this rewards commercial fishermen for overfishing.

Response 2: NMFS does not view ''the transfer of quota'' as a reward for overfishing. The Council and NMFS in this instance are concerned about meeting the FMP's objectives of preventing overfishing and maintaining landings of bluefish at an amount that complies with the rebuilding schedule for this fish stock. Both of those objectives are met with an F that would equal 0.326 in 2002. The TAL for 2002 is 26.866 million lb (12.19 million kg) and is consistent with an F of 0.326 which prevents overfishing and is actually less than the maximum level of F of 0.410, specified in the FMP as the rebuilding target for 2002. Therefore, a commercial harvest of 10.5 million lb (4.76 million kg) plus recreational landings of 16.36 million lb (7.43 million kg) would not result in overfishing. This allocation of the bluefish TAL (compared with smaller amount allocated to the commercial sector) also better ensures achievement of optimum yield and fair allocation among sectors which are goals of the Magnuson-Stevens Act.

Classification

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

NMFS prepared an FRFA for this action, which includes the IRFA, the comments and responses contained herein, and a summary of the analyses done in support of this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

The reasons for the agency's consideration of this action and its objectives are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

Public Comments

Ten sets of comments were received on the proposed rule and are responded to in the final rule. None of the comments directly or indirectly addressed the results of the IRFA.

Number of Small Entities

An active participant in the commercial sector is defined as any vessel that reported having landed 1 or more pounds of bluefish in the dealer data during calendar year 2000. These data cover activity by unique vessels. Of the active vessels reported in 2000, 829 vessels landed bluefish from Maine to North Carolina. The dealer data do not provide information about vessel activity in the states from South Carolina to Florida. The dealer data indicate that 126 federally permitted vessels landed bluefish in North Carolina in 2000. State trip Ticket Reports indicate that 1,088 vessels landed bluefish in North Carolina in 2000. Some of these vessels may be included in the 126 vessels identified in the Federal dealer data. As such, double counting is possible. In addition, the most recent data available indicate that 136 vessels landed bluefish on Florida's east coast in 1999. Bluefish landings in South Carolina and Georgia are negligible; therefore, it was assumed there was no vessel activity for those two states. In addition, it was estimated that, in recent years, approximately 2,063 party/charter vessels may have caught bluefish.

Minimizing Economic Impacts on Small Entities

The FMP includes a provision to minimize economic impacts on commercial vessels in states that face closure by allowing states to transfer surplus commercial quota within the coastwide allocation. However, under certain circumstances where state surplus quotas are not available for transfer, there are no other means to mitigate significant economic impact. The commercial quota of 10.50 million lb (4.76 million kg) would result in allocations of 1.09 million lb (0.49 million kg) of bluefish to New York and 3.37 million lb (1.53 million kg) to North Carolina. Actual 2001 landings amounted to 1.19 million lb (0.54 million kg) for New York and 3.58 million lb (1.63 million kg) for North Carolina. All other states landed less bluefish in 2001 than their proposed 2002 allocations, and, therefore, will likely not be negatively impacted by the 2002 allocations. Under the assumption that 2002 allocations for New York and North Carolina represent harvest constraints to those fisheries, and bluefish abundance and harvesting capacity would allow those states to harvest an amount equal to their 2001 landings, there could be an 8–percent reduction in bluefish revenues in New York and a 6—percent reduction in bluefish revenues in North Carolina when compared to 2001 landings. Based on 2001 state landings, the 2002 state quotas are not expected to be reached in all states. Consequently, transfers could take place to offset overages in some states.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic bluefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site:

http://www.nmfs.gov/ro/doc/nero.html.

Dated: June 3, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–14235 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 109
Thursday, June 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 01N–0548]

RIN 0910–AA19

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of March 20, 2002 (67 FR 12918). The document proposed to amend the voluntary nutrition labeling regulations by updating the names and the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. The document published with an incorrect docket number. This document corrects that error and provides additional time to submit comments.

DATES: Submit written or electronic comments on this proposal by August 20, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Doris Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–6709, appearing on page 12918 in the **Federal Register** of Wednesday, March 20, 2002, the following correction is made:

1. On page 12918, in the first column, ''[Docket No. 01N–0458]'' is corrected to read: ''[Docket No. 01N–0548]''.

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–14088 Filed 5–31–02; 4:11 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41, 48, and 145

[REG–103829–99]

RIN 1545–AX10

Excise Taxes; Definition of Highway Vehicle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules relating to the definition of a highway vehicle for purposes of various excise taxes. The regulations affect vehicle manufacturers, dealers, and lessors; tire manufacturers; sellers and buyers of certain motor fuels; and operators of heavy highway vehicles.

DATES: Written and electronic comments and requests for a public hearing must be received by September 4, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103829–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103829–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Treena Garrett, (202) 622–7180; concerning the regulations, Bernard H. Weberman (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Highway Use Tax Regulations (26 CFR part 41), the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48), and the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97–424) (26 CFR part 145) relating to the definition of highway vehicle. The proposed definition of highway vehicle applies for purposes of sections 4041 and 4081 (fuel taxes), section 4051 (retail tax on heavy vehicles), section 4071 (tire tax), section 4481 (heavy vehicle use tax), and sections 6421 and 6427 (fuel tax credits and refunds).

The Highway Trust Fund (Fund) was established in 1956 and provides a source of financing for the interstate highway system and other federal-aid highway programs. In adopting a financing system for the Fund, the Congress expressed its intention to employ taxes ''involving vehicles used on, or suitable for use on, highways.'' H. Rep. No. 84–2022, at 39 (1956). Even though the Fund was established for the construction of the highway system, it now functions, both through specific projects such as bridge rehabilitation and block grants to states, as a financial source for the construction and maintenance of almost all public roads. The taxes appropriated to the Fund are the taxes on fuel that is generally suitable for use in highway vehicles; the first retail sale of certain heavy vehicles, which Treasury regulations have limited to vehicles that are highway vehicles; the manufacturer's sale of tires of the type used on highway vehicles; and the use of certain heavy highway vehicles.

For purposes of these taxes, Treasury regulations define a highway vehicle as any self-propelled vehicle or trailer or semitrailer designed to perform a function of transporting a load over the public highway, whether or not also designed to perform other functions. Excluded from the definition are certain types of vehicles, including certain specially designed mobile machinery vehicles (the mobile machinery exception) and certain vehicles specially designed for offhighway transportation.

The mobile machinery exception is intended to apply to vehicle chassis that serve solely as a permanent mount for jobsite machinery, such as jobsite

cranes. In creating an exception for mobile machinery vehicles, the regulations assumed that vehicles that transport mobile machinery, like vehicles that are designed for offhighway transportation, would make minimal use of the public highway and thus would receive only minimal benefit from the construction and maintenance of the highway system. However, it has become apparent that the assumption that most mobile machinery vehicles would make minimal use of the public highway is incorrect. Mobile machinery vehicles generally are constructed using highway chassis that are modified only as necessary to accommodate the mounting of the jobsite machinery. These vehicles are subject to the same licensing, safety, and other nontax regulations as are other highway vehicles. Mobile machinery vehicles carry their load, typically heavy jobsite machinery, from jobsite to jobsite over the public highway, and their ability to use the public highway is in no way limited or impaired. Therefore, they derive the same benefit from, and cause the same type of damage to, the public highway as other highway vehicles, and for tax purposes should be treated the same as other highway vehicles. Thus, these regulations propose to remove the mobile machinery exception.

After removal of the mobile machinery exception, mobile machinery vehicles will be subject to the retail tax on heavy vehicles unless the vehicles qualify under the exception for offhighway transportation vehicles. Also, these vehicles may be subject to the heavy vehicle use tax; and tax credits, refunds, and exemptions may not be available for the fuel they use. Amounts charged for the jobsite machinery, including amounts charged for mounting the machinery on the chassis or body, will continue to be excluded from the tax base.

Other exceptions from the definition of highway vehicle will continue to apply. Thus, a vehicle will continue to qualify for the offhighway transportation exception if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and the special design substantially limits or impairs its capability to transport its load over the public highway. Similarly, trailers and semitrailers specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function will continue to be excepted from tax. The exemption provided in section 4053(2) for vehicle bodies primarily designed to process, haul, spread, or load or unload feed, seed, or fertilizer for farms is unaffected by this change and will continue to apply. Credits or refunds for taxed fuel used on a farm for farming purposes are also unchanged.

Proposed Effective Date

These regulations are proposed to apply on and after the first day of the first calendar quarter beginning after the day of publication of the final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernard H. Weberman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Parts 48 and 145

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, chapter I of 26 CFR is proposed to be amended as follows:

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

1. The authority citation for part 41 continues to read in part as follows:

Authority: 26 U.S.C. 7805; * * *

2. In § 41.4482(a)-1, paragraph (a)(2) is amended by removing the language ''§ 48.4061(a)–1(d)'' and adding ''§ 48.4051–1'' in its place.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

3. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

4. In § 48.4041–8, paragraph (b) is amended as follows:

1. Paragraph (b)(1) is revised.

2. Paragraphs (b)(2) and (b)(3) are removed.

3. Paragraph (b)(4) is redesignated as paragraph (b)(2).

The revision reads as follows:

§ 48.4041–8 Definitions.

* * * * *

(b) * * * (1) *Definition.* For the definition of *highway vehicle,* see § 48.4051–1.

* * * * *

5. In Subpart H, § 48.4051–1 is added under the undesignated center heading ''Motor Vehicles'' to read as follows:

§ 48.4051–1 Heavy trucks and trailers; definition of highway vehicle.

(a) *Highway vehicle*—(1) *In general.* A highway vehicle is any self-propelled vehicle, or any trailer or semitrailer, that is capable of transporting a load over the public highway. In determining whether a vehicle is capable of transporting a load over the public highway, it is immaterial that the vehicle is capable of performing other functions, that the load is permanently mounted on the vehicle, or that the load is towed instead of carried.

(2) *Exception*—(i) *Offhighway transportation vehicles.* A vehicle is not

treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. A vehicle's design is determined solely on the basis of its physical characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than it is permitted to transport over the public highway.

(ii) *Nontransportation trailers and semitrailers.* A trailer or semitrailer is not treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function at an offhighway site. For example, a trailer that is capable only of functioning as an office for an offhighway construction operation is not a highway vehicle.

(b) *Public highway. Public highway* means any road (whether a federal or state highway, city street, or otherwise) in the United States that is not a private roadway.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Vehicle A consists of a truck chassis on which a telescoping boom-type crane that extends to a length of 130 feet has been permanently mounted. The vehicle is capable of transporting the crane over the public highway. Because Vehicle A is a self-propelled vehicle capable of transporting a load (the crane) over the public highway, it is a highway vehicle described in paragraph (a)(1) of this section. It is immaterial that the load is permanently mounted on the chassis.

Example 2. Vehicle B consists of a truck chassis on which a dump body has been installed. The vehicle's empty (tare) weight is 15,000 pounds and its gross vehicle weight rating is 46,000 pounds. It is capable of transporting a load over the public highway. Its drive train and suspension enable it to transport a load off road over soft, uneven terrain but do not limit its ability to transport its load at public highway speeds. Because Vehicle B is a self-propelled vehicle capable of transporting a load over the public highway, it is a highway vehicle. Although Vehicle B has some physical characteristics for transporting its load other than over the public highway (its drive train and suspension), those characteristics are not of a magnitude, when compared with its physical characteristics for transporting the load over the public highway, to establish that it is specially designed for the primary function of transporting its load other than over the public highway. Therefore, Vehicle B is not a vehicle described in the exception provided in paragraph (a)(2)(i) of this section.

Example 3. Vehicle C consists of a truck chassis on which an oversize body designed to transport and apply liquid agricultural chemicals on farms has been installed. It is capable of transporting a load over the public highway. It is 132 inches in width, which is considerably in excess of standard highway vehicle width. For travel on uneven and soft terrain, it is equipped with oversize wheels with high-flotation tires, and nonstandard axles, brakes, and transmission. It has a special fuel and carburetor air filtration system that enable it to perform efficiently in an environment of dirt and dust. It is not able to maintain a speed of 25 miles per hour for more than one mile while fully loaded. Because Vehicle C is a self-propelled vehicle capable of transporting a load over the public highway, it is a highway vehicle described in paragraph (a)(1) of this section. However, its considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting the load over the public highway, establish that it is specially designed for the primary function of transporting its load other than over the public highway. Further, the physical characteristics for transporting its load other than over the public highway substantially limit its capability to transport a load over the public highway. Therefore, Vehicle C is a vehicle described in the exception provided in paragraph (a)(2)(i) of this section and is not treated as a highway vehicle.

(d) *Effective date.* This section is applicable on and after the first day of the first calendar quarter beginning after the day of publication of the final regulations in the **Federal Register**.

§ 48.4072–1 [Amended]

6. In § 48.4072–1, paragraphs (c)(1)(i) and (c)(1)(ii) are amended by removing the language ''§ 48.4061(a)–1(d)'' and adding ''§ 48.4051–1'' in its place.

§ 48.4081–1 [Amended]

7. In § 48.4081–1, paragraph (b), the definition of *Diesel-powered highway vehicle* is amended by removing the language ''§ 48.4041–8(b)'' and adding ''§ 48.4051–1'' in its place.

8. In § 48.6421–4, paragraph (c) is revised to read as follows:

§ 48.6421–4 Meaning of terms.

* * * * *

(c) *Highway vehicle.* For the definition of *highway vehicle,* see § 48.4051–1.

* * * * *

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

9. The authority citation for part 145 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 145.4051–1 [Amended]

10. Section 145.4051–1 is amended as follows:

1. In paragraph (a)(2), first sentence, the language ''(as defined in paragraph (d) of § 48.4061(a)–1 (Regulations on Manufacturers and Retailers Excise Taxes))'' is removed and ''as defined in § 48.4051–1 of this chapter'' is added in its place.

2. In paragraph (a)(4), last sentence, the language ''§ 48.4061(a)–1'' is removed and ''§ 48.4051–1 of this chapter'' is added in its place.

3. Paragraph (d) is removed and reserved.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–14231 Filed 6–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 945; Re: Notice No. 941]

RIN 1512–AC65

Proposal to Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties (2001R–251P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 941, a notice of proposed rulemaking published in the **Federal Register** on April 10, 2002. The proposed rule would amend the list of prime grape names to recognize ''Durif'' as a synonym for the Petite Sirah grape and ''Primitivo'' as a synonym for the Zinfandel grape. ATF has received a request to extend the comment period so that all interested parties will have sufficient time to evaluate the proposed rule.

DATES: Written comments must be received by October 8, 2002.

ADDRESSES: Send written comments regarding the proposed rule to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 941). *See* the ''Public Participation'' section of this notice for alternative means of commenting.

Copies of the proposed regulation, background materials, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301; telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2002, ATF published a notice of proposed rulemaking (Notice No. 941) in the **Federal Register** proposing two amendments to its list of prime grape variety names used to designate American wines. This list is contained in title 27 of the Code of Federal Regulations, section 4.91. The first amendment would recognize the name ''Durif'' as a synonym for the Petite Sirah grape, while the second would recognize the name ''Primitivo'' as a synonym for the Zinfandel grape. This proposal is based on DNA research conducted into the identity of these grapes. The comment period for Notice No. 941 currently closes on June 10, 2002.

However, ATF has received a request from the Wine Institute to extend the comment period for an additional 120 days. The Wine Institute, which represents 605 California wineries, states that the proposal regarding the Zinfandel grape could have significant impact on the California wine industry. For this reason, it requested additional time to adequately evaluate the scientific evidence and the various issues raised by the proposed rule.

After considering this request, ATF finds that an extension of the comment period is warranted. We are therefore extending the comment period for an additional 120 days as requested. The comment period for Notice No. 941 will now close October 8, 2002.

Public Participation

ATF requests comments from all interested parties on the proposals contained in Notice No. 941. We specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

What Is a Comment?

In order for a submission to be considered a ''comment,'' it must clearly indicate a position for or against the proposed rule or some part of it, or express neutrality about the proposed rule. Comments that use reasoning, logic, and, if applicable, good science to explain the commenter's position are most persuasive in the formation of a final rule.

To be eligible for consideration, comments must:

- Contain your name and mailing address;
- Reference Notice No. 941;
- Be legible and written in language generally acceptable for public disclosure;
- Contain a legible, written signature if submitted by mail or fax; and
- Contain your e-mail address if submitted by e-mail.

To assure public access to our office equipment, comments submitted by fax must be no more than three pages in length when printed on 8½″ by 11″ paper. Comments submitted by mail or e-mail may be any length.

How May I Submit Comments?

By Mail: You may send written comments by mail to the address shown above in the **ADDRESSES** section of this notice.

By Fax: You may submit comments by facsimile transmission to (716) 434–8041. We will treat faxed transmissions as originals.

By E-Mail: You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov.* We will treat e-mailed transmissions as originals.

By On-line Form: You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm.* We will treat comments submitted via the web site as originals.

How Does ATF Use the Comments?

We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration of late comments. We will not acknowledge receipt of comments or reply to individual comments. We will summarize and discuss pertinent comments in the preamble to any subsequent notices or the final rule published as a result of the comments.

Can I Review Comments Received?

You may view copies of the comments on Notice No. 941 by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890. You may request copies of the comments by writing to the ATF Reference Librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to Notice 941 on the ATF web site. All comments posted on our web site will show the name of the commenter, but will not show street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/,* and select ''Regulations,'' then ''Notices of proposed rulemaking (Alcohol)'' and Notice No. 941. Click on the ''View Comments'' button.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public in the ATF Reading Room or in response to a FOIA request. We may also post the comment on our web site. (See ''Can I Review Comments Received?'') Finally, we may disclose the name of any person who submits a comment and quote from the comment in the preamble to a final rule on this subject. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

This notice is issued under the authority contained in 27 U.S.C. 205.

Signed: May 31, 2002.

David L. Benton,

Deputy Director.

[FR Doc. 02–14132 Filed 6–5–02; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–236–FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed withdrawal of required amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are proposing to reconsider our position on a required amendment to the Kentucky regulatory program (the ''Kentucky program'') (found at 30 CFR 917.16(d)(2)) under the Surface Mining Reclamation Act of 1977 (SMCRA or the Act). By doing so, we are considering whether the Kentucky program is consistent with the corresponding Federal Regulations at 30 CFR 773.13(a)(1) and 30 CFR 701.5.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. July 5, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak until 4 p.m., e.s.t. on June 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Kentucky Field Office Director William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Kentucky Field Office.

William J. Kovacic, Director, Kentucky Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8402. Internet address: *bkovacic@osmre.gov.*

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (502) 564–6940. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21426). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.15 and 917.16.

II. Description of the Proposed Amendment

On December 31, 1990, we published, in the **Federal Register** (55 FR 53490), a requirement that Kentucky amend their program to require that public notice shall not be initiated until the cabinet has determined that a permit application is administratively complete. Kentucky was required to respond by January 30, 1991, but by letter of February 1, 1991, requested an extension to February 28, 1991. We granted that extension by letter of February 22, 1991. On March 4, 1991, Kentucky responded by letter indicating that the existing regulation at 405 KAR 8:010 is as effective as the Federal regulations. In their response, Kentucky reminded OSM that the initial program approval of May 18, 1982, considered these public notice differences but considered them as effective as the Federal regulations. No action was taken on this letter. OSM is proposing to reconsider our position that Kentucky's program needs to be amended.

III. Public Comment Period

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Kentucky Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. KY–236–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Kentucky Field Office at (859) 260–8402.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 21, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 1, 2002.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–14079 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[WV–096–FOR]

West Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing a proposed amendment to the West Virginia regulatory program (the ''West Virginia program'') under the Surface Mining Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the West Virginia Surface Coal Mining and Reclamation Act as contained in House Bill 4163. The amendment provides additional definition of commercial forestry and forestry. It also revises provisions for premining and postmining land use, required infrastructure, water supply, soil, soil placement and grading, bond release, and prime farmlands. Additionally, the amendment alters sections of West Virginia's bonding program performance standards, and Small Operator Assistance Program. Finally, the amendment proposes an entirely new section of the West Virginia program providing an exemption for coal extraction incidental to extraction of other minerals. The amendment is intended to improve the effectiveness of the West Virginia program.

This document gives the times and locations that the West Virginia program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t. July 8, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak until 4:00 p.m., e.s.t. on June 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to West Virginia Field Office Director Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, West Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158. Internet address: *chfa@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143. Telephone: (304) 759–0515.

The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet page: *http://wwww.dep.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507. Telephone: (304) 291–4004. (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801. Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Telephone: (304) 347–7158. Internet address: *chfa@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 1, 1981 **Federal Register** (46 FR 5915–5956). You can also find later actions concerning West Virginia program and program amendments at 30 CFR 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated December 20, 2000 (Administrative Record Number WV–1191), the West Virginia Department of Environmental Protection (WVDEP) submitted responses to required regulatory program amendments that we, the Office of Surface Mining (OSM) informed them of by letter dated August 15, 2000 (Administrative Record Number WV–1178). WVDEP sent another letter, dated April 9, 2000 (Administrative Record Number WV–1296), indicating that House Bill 4163 had been approved by the West Virginia Legislature. The bill amended 38 Code of State Regulations (CSR) 2 to make several changes to existing rules and created the Coal Related Dam Safety Rule at 38 CSR4. West Virginia submitted the proposed amendment to satisfy the relevant required program amendments.

We are not requesting comments on the amendment at CSR 38–2–12.5.d. The change to that provision will be announced in a separate **Federal Register** notice. As such, this proposed amendment is not part of WV–096-FOR and will not be addressed as such.

You will find West Virginia's program amendment presented below.

Generally

The word ''Director'' is replaced with ''Secretary.''

The term ''performance bond(s)'' is changed to ''bond(s).''

The word ''Division'' is replaced with ''Department.''

W.Va. Code 38–2–2. Definitions

At section 2.28.g. the word ''Division'' is replaced with ''Department.''

At section 2.31.b.1. the definition of ''Forestry'' is amended by adding the phrase ''for the production of wood or other wood products.'' The amended definition reads, ''Forestry, as used in subsection 7.4 of this rule, means a long-term postmining land use for the production of wood or wood products designed to accomplish the following.''

In addition, at section 2.43, the definition of ''Director'' is deleted in its entirety.

W.Va. Code 38–2–7. Premining and Postmining Land Use

At section 7.4.b.1.C.5, the words ''and shall be subject to the requirements of subsection 5.5 of this rule, except for ponds and impoundments located below the valley fills'' have been deleted. In the same subsection, ''Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule'' is added. As proposed, the subsection reads as follows:

(C)(5) For forestry, all ponds and impoundments, except for ponds and impoundments located below the valley fills created during mining shall be left in place after bond release. Any pond or impoundment left in place is subject to requirements under subsection (5)(5) of this rule. The substrate of the ponds and wetlands must be capable of retaining water to support aquatic and littoral vegetation.

Subsection 7.4.b.1.C.7 is amended by adding ''O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.'' Without this amendment, the section reads, ''Soil is defined as and shall consist of the O, A, E, B, C, and Cr horizons.''

Section 7.4.b.1.G is amended as follows. At subsection G.1, ''excessive'' is deleted to read, ''* * * Secretary may approve lesser or no vegetative cover when tree growth and productivity will be enhanced and sedimentation will not result.'' The following sentence has also been added, ''Lesser or no vegetative cover may only be authorized by the Secretary when mulch or other soil stabilizing practices have been used to protect all undisturbed areas unless demonstrated that the reduced cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.''

Section 7.4.b.1.G.3 is amended by adding ''and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream'' directly after ''The permittee may regrade and reseed only those rills and gullies that are unstable * * *.''

Section 7.4.b.1.I.2 is amended by deleting ''where there is potential for excessive erosion on slopes greater than 20%'' from the third sentence. Also, the word ''and'' is removed from in front of ''organic litter'' in the third sentence and ''except where a lesser vegetation cover has been authorized'' is added after ''organic material; followed by a deletion of ''and rock cover''. This sentence is amended to read as follows:

Furthermore, for both commercial forestry and forestry, there shall be 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter, except where a lesser vegetation cover has been authorized, and at least 80% of all trees and shrubs used to determine re-vegetation success must have been in place for at least 60% of the applicable minimum period of responsibility.

Subsection 7.4.b.1.I.3 is amended by deleting ''Additionally'' at the beginning of the third sentence and replacing it with ''Above and beyond all other standards in effect.''

Section 7.5.i.1.B is amended by adding ''meet the primary road requirements of section 2.4 of this rule,'' to the second sentence directly after ''State Department of Highways standards.''

Section 7.5.i.3.Q is amended by adding ''The reservoir is subject to requirements under subsection 5.5 of this rule'' as the last sentence.

Section 7.5.i.10 is amended by adding ''Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule'' as the last sentence.

Section 7.5.j.3.A is amended by adding ''O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.'' Without this amendment, the section reads, ''Soil is defined as and shall consist of the O, A, B, C, and Cr horizons.''

Section 7.5.j.6.B is amended by adding ''and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream.'' To ''The permittee may regrade and reseed only those hills and gullies that are unstable.''

Section 7.5.o.2 is amended to add ''and'' before ''organic litter'' and delete ''and rock cover'' after ''organic litter'' in the second sentence.

New subsection 10.4.a.1.D is added to read as follows:

a.1.D. The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, constructed during mining and reclamation must be located within the post reclamation non-prime farmland portions of the permit area. The creation of such water bodies must be approved by the Department of Environmental Protection and have the consent of all affected property owners within the permit area.

W.Va. Code 38–2–11. Insurance and Bonding

Section 11.5, ''Open Acre Limit Bonding,'' and all 11.5 subsections are deleted in their entirety. Thus, 11.6 is renumbered accordingly as ''11.5.''

At renumbered section 11.5, ''After January 1, 1994'' is deleted from the beginning of the fourth paragraph. In addition, ''or mid-term review, whichever occurs first'' is deleted from the first sentence of the last paragraph. Also, the last sentence, ''The existing bond may be determined to be adequate only if all the following criteria are met'' is deleted along with the subsections a.1–5, ''Open Acre Limit Bonding,'' which follows. Finally, the final paragraph of the subsection is deleted as well.

W.Va. Code 38–2–12. Replacement, Release, and Forfeiture of Bonds

Section 12.5.e is amended in the first sentence by deleting ''one thousand nine hundred ninety-three'' and replacing it with ''two thousand and two and every year thereafter.''

W. Va. Code 38–2–14. Performance Standards

Section 14.12.a.1 is amended by deleting ''commercial forestry,'' from the list of suitable land uses.

Section 14.15.a.1 is amended by deleting ''with all highwalls eliminated'' from the first sentence. In addition, ''W.Va. Code 22–3–13.c.2 with all highwall eliminated'' is added as the end of the first sentence.

Section 14.15.a.2 is amended by adding ''throughout,'' such that the last reads ''areas throughout the life of the operation.

Sections 14.15.b.6.B.1–2 are deleted in their entirety. In addition, a new subsection, B.1 is added as follows:

B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14(15)(d) of this rule.

Also, subsection B.3 is renumbered accordingly as new ''B.2.''

Section 14.15.d is amended by deleting the entire section and replacing it as follows:

(d) Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operations that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills.

Subsection 14.15.d.1 is amended by deleting the entire second paragraph.

Subsection 14.15.d.2 is amended by deleting the second paragraph.

Subsection 14.15.e is renumbered to ''14.15.f.''

Subsection 14.15.f is amended by deleting the current language in its entirety, renumbering to ''g,'' and adding the following:

15.g. Variance—Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of the site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

The following subsections are renumbered: 14.15.g is renumbered to ''14.15.h;'' 15.h is renumbered to ''15.j;'' 15.i to ''15.k;'' 15.j to ''15.l;'' 15.k to ''15.m;'' 15.l to ''15.n;'' and 15.m to ''15.o.''

W.Va. Code 38–2–17. Small Operator Assistance Program

Section 17.3.b.2 is amended by deleting ''five'' and replacing it with '''ten'' percent.'' In addition, ''5'' is changed to ''10.''

Section 17.4 is changed by adding as the last sentence, ''Each application for assistance shall include the following information:,'' and new subsections a–f.2 are added to read as follows:

17.4.a. A statement of the operator's intent to file a permit application;

b. The names and addresses of:

b.1. The permit applicant; and

b.2. The operator if different from the applicant

c. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant. The schedule shall include for each location:

c.1. The operator or company name under which coal is or will be mined;

c.2. The permit number and Mine Safety and Health Administration (MSHA) number;

c.3. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant; and

c.4. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

d. A description of:

d.1. The proposed method of coal mining;

d.2. The anticipated starting and termination dates of mining operations;

d.3. The number of acres of land to be affected by the proposed mining operation; and

d.4. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

e. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

e.1. The area of land to be affected;

e.2. The location of any existing or proposed test borings; and

e.3. The location and extent of known workings of any underground mines.

f. Copies of documents which show that:

f.1. The applicant has a legal right to enter and commence mining within the permit area; and

f.2. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

Section 17.6.a is amended by adding '', institution,'' before ''or analytical laboratory.'' Also, after ''laboratory,'' the following language is added, ''that can provide the required determination of a probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified under the Small Operator Assistance Program and that.''

A new section of code is proposed at W.Va. Code 38–2–25. Exemption for Coal Extraction Incidental to Extraction of Other Materials. It would read:

25.1. Exemption determination. No later than 90 days after filing of an administratively complete request for exemption, the Secretary shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the person making the request and persons submitting comments on the application of the determination and the basis for the determination. The determination of exemption shall be based upon information contained in the request and any other information available to the regulatory authority at that time. If the Secretary fails to provide a determination as specified in this section, extraction may commence pending a determination on the request.

25.2. Contents of request for exemption. An request for exemption shall be made part of a quarrying application and shall include at a minimum:

25.2.a. The names and business address of the requestor to include a street address or route number

25.2.b. A list of the minerals to be extracted;

25.2.c. Estimates of annual production of coal and the other minerals over the anticipated life of the operation;

25.2.d. A reasonable estimate of the number of acres of coal that will be extracted;

25.2.e. Evidence of publication of a public notice. The notice shall be published in a newspaper of general circulation in the county in which the operation is located and shall be published once and provide a thirty day comment period. The public notice must contain at a minimum:

25.2.e.1. The quarrying number identifying the operation.

25.2.e.2. A clear and accurate location map of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (''4''). Longitude and latitude lines and north arrow will be indicated on the map and such lines will cross at or near the center of the quarrying operation;

25.2.e.3. The names and business address of the requestor to include a street address or route number;

25.2.e.4. A narrative description clearly describing the location of the quarrying operation.

25.2.e.5. The name and address of the Department of Environmental Protection Office where written comments on the request may be submitted;

25.2.f. Geologic cross sections, maps or plans of the quarrying operation determine the following information:

25.2.f.1. The locations (latitude and longitude) and elevations of all bore holes;

25.2.f.2. The nature and depth of the various strata or overburden including geologic formation names and/or geologic members;

25.2.f.3. The nature and thickness of any coal or other mineral to be extracted;

25.2.g. A map of appropriate scale which clearly identifies the coal extraction area versus quarrying area;

25.2.h. A general description of coal extraction and quarrying activities for the operation;

25.2.i. Any other information pertinent to the qualification of the operation as exempt.

25.3. Requirements for exemption.

25.3.a. Activities are exempt from the requirements of the Act if all of the following are satisfied:

25.3.a.1. The cumulative production of coal extracted from mining area determined annually as described in this paragraph does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

25.3.a.2. Coal is extracted from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

25.3.b. Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

25.3.b.1. Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is quarried in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

25.3.b.2. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

25.4. Conditions of exemption.

A person conducting activities covered by this part shall:

25.4.a. Maintain on-site the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and the Department's exemption approval;

25.4.b. Notify the Department of Environmental Protection upon the completion of all coal extraction activities.

25.5. Stockpiling of Minerals.

25.5.a. Coal extracted and stockpiled may be excluded from the calculation of annual production until the time of its sale, transfer to a related entity or use:

25.5.a.1. Up to an amount equaling a 12–month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

25.5.a.2. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

25.5.b. The Department of Environmental Protection shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

The Department of Environmental Protection may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

25.5.b.1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

25.5.b.2. Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

25.5.b.3. The Department of Environmental Protection may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b)(2) of this section if the operator can demonstrate to the Department of Environmental Protection's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

25.5.b.4. The Department of Environmental Protection may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b)(2) and (3) of this section based on additional information available to the Department of Environmental Protection.

25.6. Revocation and enforcement.

25.6.a. The Department of Environmental Protection shall conduct an annual compliance review of the operation requesting exemption.

25.6.b. If the Department of Environmental Protection has reason to believe that a specific operation was not exempt at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department of Environmental Protection shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the Department of Environmental Protection within 30 days that the operation in question should continue to be exempt.

25.6.c. If the Department of Environmental Protection finds that an operator has not demonstrated that activities conducted in the operation area qualify for the exemption, the Department of Environmental Protection shall notify the operator.

25.7. Reporting requirements.

25.7.a.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file a quarterly production report with the Department of Environmental Protection containing the information specified in paragraph (b) of this section.

25.7.a.2. The report shall be filed no later than 30 days after the end of each quarter.

25.7.a.3. The information in the report shall cover:

25.7.a.3.A. Quarterly production of coal and other minerals, and

25.7.a.3.B. The cumulative production of coal and other minerals.

25.7.a.3.C. The number of tons of coal stockpiled.

25.7.a.3.D. The number of tons of other minerals stockpiled.

III. Public Comment Period

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Kentucky Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. WV–096–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the West Virginia Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 21, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 2002.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–14078 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 182–4196b; FRL–7224–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The purpose of this SIP is to request a one-year extension of the Federal deadline for incorporating checks of on-board diagnostic (OBD) systems on 1996-and-newer vehicles to the Commonwealth's motor vehicle inspection and maintenance (I/M) program. EPA's I/M requirements regulations required states to add OBD checks to their I/M programs by January 1, 2002. However, states had the option to submit a request to EPA for a delay, of up to one additional year, of the deadline to add OBD system checks to the I/M program. Pennsylvania's SIP revision contains a request for the maximum one-year delay allowed by EPA, or until January 1, 2003.

In the Final Rules section of this **Federal Register**, EPA is approving Pennsylvania's SIP request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial SIP request and anticipates no adverse comments. A more detailed description of the Commonwealth's request and a detailed rationale for EPA's granting of the requested deadline extension is set forth in the direct final rule.

If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 8, 2002.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. These documents are also available from the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 29, 2002.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 02–14036 Filed 6–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1290, MB Docket No. 02–132, RM–10374]

Digital Television Broadcast Service; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a joint petition filed by Alabama Educational Television Commission, licensee of station WAIQ(TV) and LibCo, licensee of station WSFA(TV), proposing the substitution of DTV channel 14 for DTV channel 57; and the substitution of DTV channel *27 for DTV *14. DTV Channel 14 can be allotted to Montgomery at reference coordinates 31–58–28 N. and 86–09–44 W. with a power of 600, a height above average terrain HAAT of 530 meters. DTV channel *27 can be allotted to Montgomery at reference coordinates 32–22–55 N. and 86–17–33 W. with a power of 750, a height above average terrain HAAT of 183.

DATES: Comments must be filed on or before July 25, 2002, and reply comments on or before August 9, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Washington, DC 20036–6802 (Counsel for LibCo); and Jacqueline P. Cleary, Hogan & Hartson, LLP, 555 13th Street, NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–132, adopted May 29, 2002, and

released June 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama is amended by adding DTV channel *27 and by removing DTV channel *57 at Montgomery.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–14022 Filed 6–5–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 109
Thursday, June 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–.

Form Number: AID 1570–13.

Title: Narrative/Time-Line Report.

Type of Submission: New.

Purpose: This collection is a management and monintoring report used by the Bureau for Democracy, Conflict and Humanitarian assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreement between its office and the recipients, which are United States Organizations that sponsor Overseas Institutions.

Annual Reporting Burden:

Respondents: 80.

Total annual responses: 380.

Total annual hours requested: 200 hours.

Dated: May 29, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–14164 Filed 6–5–02; 8:45 am]

BILLING CODE 6116–01–M

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–.

Form Number: AID 1570–14.

Title: Report on Commodities.

Type of Submission: New.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 80.

Total annual responses: 380.

Total annual hours requested: 200 hours.

Dated: May 29, 2002,

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 02–14165 Filed 6–5–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to FFS, Inc. of Mahwah, New Jersey, an exclusive license to U.S. Patent No. 6,346,236, ''Sunscreens from Vegetable Oil and Plant Phenols,'' issued on February 12, 2002. Notice of Availability of this invention for licensing was published in the **Federal Register** on March 13, 2001.

DATES: Comments must be received within thirty (30) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as FFS, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–14196 Filed 6–5–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the relevant period applicable for trigger levels on each of those products.

EFFECTIVE DATE: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Bertsch, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530–South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6278, or email charles.bertsch@usda.gov.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43 (a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR 427, January 4, 1995.

Notice

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427, January 4, 1995.

QUANTITY BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	1,137,163 mt	January 1, 2002 to December 31, 2002.
Mutton	14,679 mt	January 1, 2002 to December 31, 2002.
Cream	6,341,016 liters	January 1, 2002 to December 31, 2002.
Evaporated or Condensed Milk	7,106,191 kilograms	January 1, 2002 to December 31, 2002.
Nonfat Dry Milk	4,205,862 kilograms	January 1, 2002 to December 31, 2002.
Dried Whole Milk	3,430,322 kilograms	January 1, 2002 to December 31, 2002.
Dried Cream	4,661 kilograms	January 1, 2002 to December 31, 2002.
Dried Whey/Buttermilk	123,994 kilograms	January 1, 2002 to December 31, 2002.
Butter	13,555,503 kilograms	January 1, 2002 to December 31, 2002.
Butter Oil and Butter Substitutes	10,919,487 kilograms	January 1, 2002 to December 31, 2002.
Dairy Mixtures	4,665,156 kilograms	January 1, 2002 to December 31, 2002.
Blue Cheese	3,927,895 kilograms	January 1, 2002 to December 31, 2002.
Cheddar Cheese	17,503,765 kilograms	January 1, 2002 to December 31, 2002.
American Type Cheese	16,528,242 kilograms	January 1, 2002 to December 31, 2002.
Edam/Gouda Cheese	8,169,998 kilograms	January 1, 2002 to December 31, 2002.
Italian-Type Cheese	17,969,975 kilograms	January 1, 2002 to December 31, 2002.
Swiss Cheese with Eye Formation	39,140,027 kilograms	January 1, 2002 to December 31, 2002.
Gruyere Process Cheese	8,191,124 kilograms	January 1, 2002 to December 31, 2002.
Lowfat Cheese	3,133,638 kilograms	January 1, 2002 to December 31, 2002.
NSPF Cheese	57,214,298 kilograms	January 1, 2002 to December 31, 2002.
Peanuts	60,603 mt	April 1, 2002 to March 31, 2003.
Peanut Butter/Paste	21,299 mt	January 1, 2002 to December 31, 2002.
Raw Cane Sugar	1,645,884 mt	October 1, 2001 to September 30, 2002.
	1,358,418 mt	October 1, 2002 to September 30, 2003.
Refined Sugar and Syrups	27,871 mt	October 1, 2001 to September 30, 2002.
	46,395 mt	October 1, 2002 to September 30, 2003.
Blended Syrups	0 mt	October 1, 2001 to September 30, 2002.
	2 mt	October 1, 2002 to September 30, 2003.
Articles Over 65% Sugar	0 mt	October 1, 2001 to September 30, 2002.
	10 mt	October 1, 2002 to September 30, 2003.
Articles Over 10% Sugar	80,886 mt	October 1, 2001 to September 30, 2002.
	80,886 mt	October 1, 2002 to September 30, 2003.
Sweetened Cocoa Powder	1,196 mt	October 1, 2001 to September 30, 2002.

QUANTITY BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
	759 mt	October 1, 2002 to September 30, 2003.
Chocolate Crumb	25,261,975 kilograms	January 1, 2002 to December 31, 2002.
Lowfat Chocolate Crumb	460,209 kilograms	January 1, 2002 to December 31, 2002.
Infant Formula Containing Oligosaccharides.	125,000 kilograms	January 1, 2002 to December 31, 2002.
Mixes and Doughs	5,366 mt	October 1, 2001 to September 30, 2002.
	5,364 mt	October 1, 2002 to September 30, 2003.
Mixed Condiments and Seasonings	243 mt	October 1, 2001 to September 30, 2002.
	523 mt	October 1, 2002 to September 30, 2003.
Ice Cream	4,218,503 liters	January 1, 2002 to December 31, 2002.
Animal Feed Containing Milk	262,895 kilograms	January 1, 2002 to December 31, 2002.
Short Staple Cotton	5,197,960 kilograms	September 20, 2001 to September 19, 2002.
	5,273,740 kilograms	September 20, 2002 to September 19, 2003.
Harsh or Rough Cotton	0 mt	August 1, 2001 to July 31, 2002.
	0 mt	August 1, 2002 to July 31, 2003.
Medium Staple Cotton	701,895 kilograms	August 1, 2001 to July 31, 2002.
	740,504 kilograms	August 1, 2002 to July 31, 2003.
Extra Long Staple Cotton	5,481,363 kilograms	August 1, 2001 to July 31, 2002.
	6,562,505 kilograms	August 1, 2002 to July 31, 2003.
Cotton Waste	0 kilograms	September 20, 2001 to September 19, 2002.
	0 kilograms	September 20, 2002 to September 19, 2003.
Cotton, Processed, Not Spun	748 kilograms	September 11, 2001 to September 10, 2002.
	1,790 kilograms	September 11, 2002 to September 10, 2003.

[FR Doc. 02–14133 Filed 6–5–02; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for 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.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspaper listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a) and 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 notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Elaine Cloward, Appeals Specialist, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notice 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 14 states of the Southern Region and the Commonwealth of Puerto Rico *Atlanta Journal,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 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 bi-weekly (Wednesday & Saturday) 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
Toccoas Ranger District
The News Observer (primary) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA
The Dashlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA
Brasstown Ranger District
North Georgia News, (primary) published weekly (Wednesday) in Blairsville, GA
Towns County Herald, (additional) published weekly (Thursday) in Hiawassee, GA
The Dahlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA
Tallulah Ranger District
Clayton Tribune, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District
Northeast Georgian, (primary) published bi-weekly (Tuesday & Friday) in Cornelia, GA
Chieftain & Toccoa Record, (additional) published bi-weekly (Tuesday & Friday) in Toccoa, GA
White County News Telegraph, (additional) published weekly (Thursday) in Cleveland, GA
The Dahlonega Nuggett, (additional) 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

District Ranger Decisions

Ocoee-Hiwassee Ranger District
Polk County News, published weekly (Wednesday) in Benton, TN
Tellico Ranger District
Monroe County Advocate, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN
Nolichucky-Unaka Ranger District
Greeneville Sun, published daily (except Sunday) in Greeneville, 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

Francis 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 Chronicle, 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 and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District
Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District
The Recorder, published weekly (Thursday) in Monterey, 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
New River Ranger District
Roanoke Times, published daily in Roanoke, VA
Glenwood/Pedlar 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

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District
Minden Press Herald, (primary) published daily in Minden, LA
Homer Guardian Journal, (additional) published weekly (Wednesday) in Homer, LA
Catahoula Ranger District
The Town Talk, published daily in Alexandria, LA
Calcasieu Ranger District
The Town Talk, (primary) published daily in Alexandria, LA
The Leesville Ledger, (additional) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA
Kisatchie Ranger District
Natchitoches Times, published daily (Tuesday thru 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

Area Supervisor Decisions

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 daily (except Saturday) 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
Uwharrie Ranger District
Montgomery Herald, published weekly (Wednesday) in Troy, NC
Wayah Ranger District
The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas and 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
Fourche Ranger District
Arkansas Democrat-Gazette, published daily in Little Rock, AR
Jessieville/Winona Ranger District
Arkansas Democrat-Gazette, published daily in Little Rock, AR
Mena/Oden Ranger District
Arkansas Democrat-Gazette, published daily in Little Rock, AR
Poteau/Cold Springs 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

Dated May 30, 2002.

R. Gary Pierson,

Acting Deputy Regional Forester, NR.

[FR Doc. 02–14158 Filed 6–5–02; 845 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Water Well (642), Spring Development (574) and Windbreak/Shelterbelt Establishment (380). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: May 9, 2002.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–14144 Filed 6–5–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #394, Firebreak, #399, Fishpond Management, and #645, Upland Wildlife Habitat Management to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: May 22, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–14143 Filed 6–5–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 020430099–2099–01]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information; Reopening of Comment Period

AGENCY: Department of Commerce.

ACTION: Notice; Request for comment; Reopening of comment period.

SUMMARY: The Department of Commerce is re-opening, until June 30, 2002, the period for submission of public comments on its Department-wide draft guidelines implementing Section 515 of Public Law 106–554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, known as the Data Quality Act.

DATE: Comments on the Commerce Department guidelines must be received by close of business June 30, 2002.

ADDRESSES: Comments should be sent to Thomas N. Pyke, Jr., Chief Information Officer, Department of Commerce, 14th and Constitution Avenue, NW., Room 5029B, Washington, DC 20230. Send e-mail to *informationquality@doc.gov*. Department of Commerce operating units will publish their information quality standards on the Web sites listed in the **SUPPLEMENTARY INFORMATION** section of this document. Comments on the operating unit standards should be addressed directly to the contact noted in the operating unit standards.

FOR FURTHER INFORMATION CONTACT: Diana H. Hynek, Office of the Chief Information Officer, Department of Commerce, 14th and Constitution Avenue, NW., Room 6625, Washington, DC 20230. Telephone (202) 482–0266 or by e-mail to *dhynek@doc.gov*.

SUPPLEMENTARY INFORMATION: Section 515 of Public Law 106–554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, directs the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical

information) disseminated by Federal agencies.'' In addition, section 515 requires that agencies subject to the OMB guidelines must establish ''administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with [the OMB guidelines].'' The OMB final guidelines were published in the **Federal Register** on February 22, 2002. Those guidelines direct that, by May 1, 2002, agencies publish for public comment their draft guidelines.

On May 1, 2002, the Commerce Department posted on its website, and on May 3, 2002, published in the **Federal Register** (67 FR 22398), its draft Department-wide guidelines. Public comment was requested through June 3, 2002. Pursuant to a request from the public for additional time to comment, the Department is re-opening the comment period until June 30, 2002. Any comments that may have been received between June 3, 2002 and June 6, 2002 will be considered timely filed.

Dated: May 31, 2002.

Thomas N. Pyke, Jr.,

Chief Information Officer.

[FR Doc. 02–14167 Filed 6–3–02; 11:30 am]

BILLING CODE 3510–CW–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges from India; Extension of Time Limit of Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of a new shipper review of certain stainless steel flanges from India. This review covers one Indian exporter, Metal Forgings Private Limited/ Metal Rings and Bearing Races Limited (Metal Forgings), and the period January 1, 2001 through July 31, 2001.

EFFECTIVE DATE: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (2001).

Background

Based on a request from Metal Forgings, and pursuant to section 351.214 of the Department's Regulations, on November 23, 2001, the Department initiated a new shipper review of the antidumping duty order on certain stainless steel flanges from India, covering the period January 1, 2000 through July 31, 2001 (66 FR 59568, November 29, 2001). The preliminary results are currently due no later than May 22, 2002.

Postponement of Preliminary Results

We have determined that we need additional information concerning the nature of respondent's home market merchandise, sales prices, and expenses, in order to make the calculations necessary for the preliminary results. Because of these unresolved issues, we consider this case to be extraordinarily complicated, and we are extending the time limit for completion of the preliminary results until September 19, 2002, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act and section 351.214(i)(2) of the Department's regulations. The deadline for the final results of this review will continue to be 90 days after the date on which the preliminary results are issued, in accordance with 19 CFR 351.214(i)(1).

Dated: May 19, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary Import Administration, Group III.

[FR Doc. 02–14233 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 051602C]

Notice of Public Scoping and Preparation of an Environmental Impact Statement and Environmental Impact Report for Mendocino Redwood Company's Habitat Conservation Plan and Natural Community Conservation Plan

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

ACTION: Notice of Intent.

SUMMARY: The National Marine Fisheries Service (NMFS), Fish and Wildlife Service (FWS), and California Department of Fish and Game (CDFG) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR). The EIS/EIR will consider an application from the Mendocino Redwood Company (MRC) for an incidental take permit for take of endangered and threatened species in accordance with the Endangered Species Act of 1973, as amended (ESA), and an incidental take authorization in accordance with the Natural Community Conservation Planning Act (NCCPA), (California Fish and Game Code). MRC's application will include a Habitat Conservation Plan (HCP), as required under the ESA, and Natural Community Conservation Plan (NCCP) as required under the NCCPA. The joint HCP/NCCP will address forest management and timber operations on MRC lands in Mendocino and Sonoma Counties, California. The proposed 80–year HCP/NCCP will encompass 220,000 to 240,000 acres of lands owned by MRC on and after the granting date of the incidental take permits, and may cover up to 19 fish and wildlife species and up to 59 plant species.

We will prepare the EIS/EIR pursuant to the National Environmental Policy Act and the California Environmental Quality Act. The EIS/EIR will analyze MRC's proposed action and alternatives to the proposed action. We expect MRC to present the HCP/NCCP as the proposed action. To satisfy both National Environmental Policy Act and California Environmental Quality Act requirements, NMFS, FWS, and CDFG

are conducting a joint scoping process for the preparation of the EIS/EIR. This notice describes the proposed action and possible alternatives, notifies the public of scoping meetings, invites public participation in the scoping process for preparing the joint EIS/EIR, solicits written comments, and identifies the NMFS and FWS officials to whom questions and comments concerning the proposed action and the joint EIS/EIR may be directed.

DATES: Written comments from all interested parties must be received on or before July 8, 2002. Public scoping meetings where oral and written comments can be submitted, are scheduled for June 25, 2002, from 7 p.m. to 9 p.m. in Santa Rosa, CA, June 26, 2002; from 7 p.m. to 9 p.m. in Ukiah, CA; and for June 27, 2002, from 7 p.m. to 9 p.m. in Fort Bragg, CA.

ADDRESSES: Comments regarding the scope of the EIS/EIR and requests for additional information should be addressed to Eric Shott, NMFS, 777 Sonoma Ave, Room 325, Santa Rosa, CA 95404 or John Hunter, FWS, 1655 Heindon Road, Arcata, CA 95521. Written comments may also be sent by facsimile to (707) 822–8411. However, comments will not be accepted if submitted via e-mail or the internet. Public scoping meetings will be held at the State of California Justice Joseph A. Rattigan Building, 50 D Street, Santa Rosa, CA, 95404, Ukiah Valley Conference Center, 200 South School Road Street, Ukiah, CA, 95482 and the Fort Bragg Town Hall, 363 North Main Street, Fort Bragg, CA, 95437. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8 a.m. to 5 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be available to the public.

FOR FURTHER INFORMATION CONTACT: Eric Shott, NMFS, at (707) 575–6089 or John Hunter, FWS, at (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA prohibits the ''take'' of wildlife species listed as endangered or threatened by either the FWS or NMFS (16 USC 1538). The ESA defines the term ''take'' as: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. Pursuant to section 10(a)(1)(B) of the ESA, FWS and NMFS may issue an ''incidental take permit'' to take listed species if such taking is incidental to, and not the purpose of, otherwise lawful activities.

The take prohibitions of the ESA generally do not apply to listed plants on private land unless their destruction on private land is in violation of State law or regulation. To the extent that particular plants are protected by state law, we expect that MRC will request permits for, and will consider, plants in their HCP/NCCP. Another reason for the company to consider plants is that the FWS cannot issue a permit for wildlife species that would jeopardize listed plant species.

To receive an incidental take permit under the ESA, an applicant must prepare an HCP that specifies the following: (1) The impact of the taking, (2) steps the applicant will take to minimize and mitigate the impact; (3) funding available to implement the steps; (4) what alternative actions to the taking the applicant considered and the reasons why they were not taken; and (5) any other measures NMFS or FWS may require as being necessary or appropriate for the purpose of the plan (16 USC 1539). To issue a permit, NMFS and FWS must find that: (1) the taking will be incidental, (2) the applicant will minimize and mitigate impacts of the take to the maximum extent possible; (3) the applicant will ensure adequate funding for the HCP; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species; and the applicant met other measures required by FWS and NMFS. Regulations governing issuance of FWS permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, and at 50 CFR 222.301 through 307 for NMFS-issued permits.

The California Endangered Species Act prohibits the ≥take≥ of wildlife species listed as endangered or threatened by the California Fish and Game Commission (California Fish and Game Code, section 2080). The California Endangered Species Act defines the term ≥take≥ as: hunt, pursue, catch, capture or kill, or attempt to engage in such conduct (California Fish and Game Code, section 86). Pursuant to section 2835 of the NCCPA (California Fish and Game Code section 2835), CDFG may issue a permit that authorizes the take of any California Endangered Species Act listed species or other species whose conservation and management is provided for in a CDFG approved NCCP. MRC is expected to pursue an incidental take authorization in accordance with section 2835 of the NCCPA.

MRC is developing a HCP/NCCP in anticipation of applying for an incidental take permit under the ESA and the NCCPA. The HCP/NCCP will apply to 220,000 to 240,000 acres of commercial timberland owned by MRC in Mendocino and Sonoma counties, California. This property occurs in 87 planning watersheds with habitat important to the conservation of threatened and endangered species in the central California coast and northern California region. The HCP/NCCP area includes, but is not limited to, MRC lands in the following watersheds; Hollow Tree Creek, Cottoneva Creek, Rockport coastal streams (Hardy, Juan, and Howard), Noyo River, Albion River, Big River, Navarro River, Upper Russian, Greenwood Creek, Garcia River, Alder Creek/Schooner Creek/Mallo Pass, Elk Creek, Doyle Creek, Buckhorn Creek, Gualala River, and Willow/Freezeout Creeks.

Based on the HCP, MRC intends to request an incidental take permit from FWS for the marbled murrelet (Brachyramphus marmoratus), northern spotted owl (*Strix occidentalis caurina*), Point Arena mountain beaver (*Aplodontia rufa nigra*), California freshwater shrimp (*Syncaris pacifica*), California red-legged frog (*Rana aurora draytonii*), Sonoma alopecurus (*Alopectris aequalis var. sonomensis*), Humboldt milkvetch (*Astragalus agnicidus*), white sedge (*Carex albida*), Pennell's bird-beak (*Cordylanthus tenuis* ssp. *capillaris*), Baker's larkspur (*Delphinium bakeri*), Kellogg's buckwheat (*Eriogonum kelogii*), Roderick's Fritillary (*Fritillaria roderickii*), Burke's goldfields (*Lasthenia burkei*), and showy Indian clover (*Trifolium amoenum*). MRC intends to request an incidental take permit from NMFS for the California Coastal chinook salmon Evolutionarily Significant Unit (ESU) (*Oncorhynchus tshawytscha*), Central California Coast and Southern Oregon/Northern California Coasts coho salmon ESUs (*Oncorhynchus kisutch*), and Central California Coast and Northern California steelhead ESUs (*Oncorhynchus mykiss*). MRC intends to request an incidental take permit from CDFG for all of these species listed above.

MRC may also seek coverage in the incidental take permits for unlisted species including 51 species of plants, four species of amphibians, three species of birds, and two species of mammals. Should unlisted covered species become listed under the ESA during the term of the permit, take authorization for those species will become effective upon listing.

Activities that MRC may propose for incidental take permit coverage include mechanized timber harvest; forest product transportation; road and

landing construction, use, maintenance and abandonment; site preparation; tree planting; certain types of vegetation management; fertilizer application; silvicultural thinning and other silvicultural activities; fire suppression; rock quarries and borrow pit operations; gravel extraction; aquatic habitat restoration and other forest management activities, miscellaneous and minor forest product collecting; recreation; cell- and repeater-site development and maintenance; and grazing leases. The HCP/NCCP is also expected to cover certain monitoring activities and scientific work in the HCP/NCCP area.

FWS and NMFS expect MRC's proposed action to include an 80–year HCP/NCCP to provide for management of California properties in Mendocino and Sonoma Counties. The HCP/NCCP is expected to address each of the areas enumerated above, as required by the ESA and the NCCPA. The goal of the HCP/NCCP will be to: (1) protect and improve habitats required by species covered by the HCP/NCCP, (2) establish appropriate guidelines for continuing timber harvests and other forest management activities, and (3) improve the native biodiversity present on MRC lands so it more closely resembles its historical richness and abundance. The conservation strategy is expected to include enhanced wildlife habitat and stream buffers, a sediment reduction program, a monitoring program, adaptive management, and wildlife and aquatic habitat restoration measures.

FWS, NMFS and CDFG will consider a range of alternatives to the proposed HCP/NCCP, including a No Action alternative, and other project alternatives recommended during this scoping process. We expect the alternatives to include HCP/NCCPs with modified lists of covered species, land coverage areas, and permit terms. Different strategies for minimizing and mitigating the impacts of incidental take may also be considered. We invite comments and suggestions from all interested parties to ensure that a reasonable range of alternatives and issues related to them are addressed and that all significant issues are identified.

Environmental review of the HCP/NCCP will be conducted in accordance with the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act regulations (40 CFR parts 1500-1508), and FWS and NMFS procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR Section 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint EIS/EIR.

You are invited to submit comments and to participate in the scoping process. We request comments be received no later than 30 days after the date of this notice.

The primary purpose of the scoping process is to identify the significant issues related to issuance of incidental take permits for activities covered in the HCP/NCCP. Interested persons are encouraged to attend the public scoping meeting to identify and discuss issues and alternatives that should be addressed in the joint EIS/EIR. The proposed agenda for this facilitated meeting includes a summary of the range of activities that may be authorized in the incidental take permits; status of and threats to subject species; and tentative issues, concerns, opportunities, and alternatives. Additional public meetings will be conducted on later dates to provide more opportunities to comment on the draft EIS/EIR.

Dated: May 31, 2002.

D. Kenneth McDermott

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California

May 31, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National marine Fisheries Service.

[FR Doc. 02–14234 Filed 6–5–02; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 020418091–2091–01]

RIN 0648–ZB20

Ballast Waster Treatment Technology Demonstration Program: Request for Proposals for FY 2002

AGENCIES: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce; Fish and Wildlife Service, Department of the Interior; and Maritime Administration, Department of Transportation.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant), the U.S. Fish and Wildlife Service (Service), and the U.S. Maritime Administration (MARAD) are entertaining proposals to participate in ballast water treatment research and technology demonstration projects that address the problem of aquatic invasive species entering U.S. waters from ballast water. In FY 2002 only, Sea Grant and the Service expect to make available about $2.1 million to support projects to improve ballast water treatment and management, especially in the Chesapeake Bay and the Great Lakes. In addition, in FY 2002 only, MARAD expects to make available several ships of its Ready Reserve Force Fleet to act as test platforms for ballast water technology demonstration projects.

DATES: The closing date for receipt of proposals for funding by Sea Grant or the Service is 5 p.m. EDT, July 22, 2002. The closing date for letters of application for use of a MARAD ship is 5 p.m., EDT, July 8, 2002. Facsimile transmissions and electronic mail submission of proposals will not be accepted. We anticipate that funding decisions will be made by August 15, 2002, and that successful applicants will be able to initiate projects approximately December 1, 2002.

ADDRESSES: Proposals must be submitted to: National Sea Grant College Program, R/SG, Attn: Ballast Water Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

FOR FURTHER INFORMATION CONTACT: Dorn Carlson, Associate Program Director for Aquatic Nuisance Specifies, or Mary Robinson, Secretary, both at the National Sea Grant Office, 301–713–2435; facsimile 301–713–0799; or Sharon Gross, U.S. Fish and Wildlife Service, 703–358–2308; facsimile 703–358–2210; or Debra Aheron, U.S. Maritime Administration, 202–366–8887; facsimile 202–366–6988.

SUPPLEMENTARY INFORMATION:

1. Program Authority

Authority: 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121–1131; 50 U.S.C. App 1744 (2000).

Catalog of Federal Assistance Number: 11.417, Sea Grant Support; 15.FFA, Fish and Wildlife Management Assistance.

II. Program Description

Background

Introductions of nonindigenous aquatic nuisance species (ANS) are increasing in frequency and causing substantial damage to the Nation's environment and economy. Although the most prominent of these introductions has been the zebra mussel, many other ANS have been introduced and have become a nationwide problem that threatens the environment, the economy, and public health and welfare. While some intentional introductions of nonindigenous aquatic species may have had beneficial effects, many others already present in U.S. waters, or with the potential to enter U.S. waters, may have significant impacts on the natural resources and economy of the United States. In response, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*) and the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) (collectively, the Acts) established a framework for the Nation to address the problems of aquatic nuisance species invasions.

In addition, the Acts recognized the serious threat posed by ballast water discharge in causing new invasions and called for ballast water management demonstration programs. A 1996 National Research Council study of the ballast water problem, ''Stemming the Tide,'' concluded that, with the growth of global shipping, and the changes in modern shipping practices, introductions of aquatic nuisance species through ballast water discharge were likely to remain a serious problem. The study called for the development of improved technology for the management of ballast water to eliminate this treat to the Nation's waters. Several projects are under way demonstrating the usefulness of various technologies, although the possibility that there will be a single technological solution that is acceptable for all modes of shipping operations and classes of vessels is unlikely.

Resource Availability and Priorities

(1) Funding for Ballast Water Technology Projects

The National Sea Grant College Program of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce (DOC) and the U.S. Fish and Wildlife Service of the Department of the Interior (DOI) encourage proposals that address one of the following program areas:

(a) Ballast water projects that clearly target ballast water priorities of the Chesapeake Bay. About $870,000 is available to support projects in this program area. The maximum allowable request for a single project is $870,000.

(b) Ballast water projects that clearly target ballast water priorities of the Great Lakes. About $980,000 is available to support projects in this program area. The maximum allowable request for a single project is $980,000.

(c) Ballast water projects that clearly target documented national or regional ballast water management priorities. About $250,000 is available to support projects in this program area. The maximum allowable request for a single project is $250,000.

Proposals may be for basic or applied research, but research projects must clearly support the development and demonstration of ballast water treatment technologies that will ultimately be viable for use by operating vessels (although they need not support the development of any one particular technology). Projects may be proof-of-principle, laboratory-, pilot-, or full-scale experiments, or field tests. proposals for pilot-scale ballast water projects should demonstrate treatment technologies that have proven themselves at a laboratory scale, and proposals for full-scale projects should demonstrate treatment technologies that have proven themselves at a pilot scale.

Factors that demonstrate that a project targets Chesapeake Bay or Great Lakes priorities include:

—Whether all field experimentation in the project takes place in the Chesapeake Bay or Great Lakes, or uses ballast water taken from or destined for the Chesapeake Bay or Great Lakes, and the extent to which other aspects of the project are sited in the Chesapeake Bay or Great Lakes area;

—Whether the objectives of the project address documented Chesapeake Bay or Great Lakes issues of concern, such as those set out in the Chesapeake Bay Program document, ''Recommendations for (a) the Reauthorization of the National Invasive Species Act of 1996, and (b) the National Ballast Management program, to Address issues of Concern for the Chesapeake Bay Region,'' May 12, 2001, (CBP/TRS #255/01, EPA# 903–R–01–006), and the document from the Great Lakes Panel of the Aquatic Nuisance Species Task Force, ''Policy Statement on Ballast Water Management,'' March 2001 (available at Internet address *http://www.glc.org/ans/3–16–bwmpolicyposition.pdf*);

—Whether resource managers, maritime industry representatives, or other interests from the Chesapeake Bay or Great lakes have endorsed the project, especially if that endorsement includes participating in the design or execution of the project or providing matching funds; and,

—Whether the expertise and past experience of the investigators involves ballast water investigations relevant to the Chesapeake Bay or Great Lakes.

Examples of national ballast water priorities are those set out in the document, ''Recommended Ballast Water Research Priorities of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force,'' February 28, 2002.

State and regional ballast water priorities have been published by some regional panels of the Aquatic Nuisance Species Task Force and in some State ANS Management Plans. Not all regions of the country have regional panels, and not all panels have published ballast water priorities. Not all states have State ANS Management Plans, and not all ANS Management Plans contain ballast water priorities. Further information on Aquatic Nuisance Species Task Force Committees, Regional Panels and State ANS Management Plans can be found at the Internet Web site, *http://www.ANSTaskForce.gov/*.

Funds for program areas 1(a) and 1(b) are provided by Sea Grant. The allocation of funds between Chesapeake Bay and the Great Lakes in these two program areas is according to Congressional direction. Funds for program area 1(c) are provided by the Service.

Contact Dorn Carlson, listed under **FOR FURTHER INFORMATION CONTACT,** above, with questions about eligibility for funding under these program areas. Matching funds are not required, but may be included. Proposals are limited to 1 year of funding, but activities may extend for up to 2 years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year.

(2) Use of ships as Test Platforms for Ballast Water Technology Demonstration Projects

The U.S. Maritime Administration is making available a limited number of ships to act as test platforms for ballast water technology demonstration projects. Proposed projects with higher impact and showing higher scientific or professional merit, as determined by the

criteria in section IV., *Evaluation Criteria,* below, will be given higher priority for use of a MARAD ship, provide that a ship appropriate to that project is available and all other requirements of MARAD for ship use are met.

Applicants may apply for both funding and the use of a MARAD ship to support a single ballast water project, but it is not necessary to request use of a MARAD ship in order to receive consideration for funding, nor is it necessary to request funding in order to receive consideration for use of a MARAD ship. Any proposal requesting both funding and the use of a MARAD ship, however, will only be awarded funding if it (a) is selected for funding by the selection process described in section V., below; (b) is approved by MARAD for use on a ship; and (c) meets all requirements prosed by MARAD as conditions of use of the ship, throughout the duration of the project. Availability of MARAD ships is not automatic; MARAD reserves the right to offer or decline any request. Funding may be denied to an otherwise worthy proposal requesting both funding and the use of a MARAD ship, if discussions between the applicant and MARAD are incomplete at the time funding decisions are made.

Note: Due to security restrictions in the aftermath of 9/11/01, the number and frequency of visits to a participating ship, and the number of visitors at any given time, may be limited. All visits must be scheduled and approved by a ship's POC (to be designated) in advance. Also, approval for use of a MARAD ship for testing will take into consideration the degree to which existing system may be disturbed. In no case will operational or mission capability be allowed to be compromised, MARAD will be the sole determinator for this caveat. For further information see Section VII.

III. Eligibility

Eligible applicants are individuals, institutions of higher education, other nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. Applications from non-Federal and eligible Federal applicants (including NOAA employees) will compete in the same selection process against the Evaluation Criteria in Section IV. Proposals selected for funding from non-Federal applicants will be funded through project grants or cooperative agreements under the terms of this notice. We will use cooperative agreements if the proposed project includes substantial involvement that will be described in the award. Examples of substantial involvement may include collaboration in research, participation in selection of key personnel, or approval of key stages in the project before subsequent steps are undertaken. Contact Dorn Carlson, listed under **FOR FURTHER INFORMATION CONTACT,** above, with questions about cooperative agreements. Federal agencies will be funded through interagency transfers.

Please Note: A Federal applicant will be considered eligible to receive funds only if it can demonstrate that it has legal authority to receive funds from another Federal agency in excess of its appropriation. The Economy Act (31 U.S.C. 1535) will not be considered as legal authority to transfer funds since awards issued under this announcement will not constitute a purchase of goods or services by DOC, DOI or DOT.

IV. Evaluation Criteria

The technical evaluation criteria for proposals submitted under this announcement are as follows:

(1) Impact of Proposed Project (70 percent): The effect this activity, if successful, will have on the development of ballast water treatment technologies capable of addressing documented ballast water priorities, or the need for this activity as a necessary step toward such technology development; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and will be involved in the execution of the activity as appropriate.

(2) Scientific or Professional Merit (30 percent): Probability of the activity successfully meeting its objectives; degree to which the activity will advance the state of the science or technology through synthesis of existing information and use and extension of cutting edge as well as state-of-the-art methods; degree to which new approaches to solving problems and exploiting opportunities in resource management or development; appropriateness of the experimental design and scale of the experiment to the level of development of the technology; degree to which investigators are qualified by education, training, and/or experience to execute the proposed activity; degree to which the principles of the technology have been proven in appropriate prior experiments; and record of achievement with previous funding.

V. Selection Procedures

Proposals will be subjected to peer review and ranked in accordance with the assigned weights of the above evaluation criteria by an independent panel consisting of government, academic, and industry experts. Panel members will provide individual evaluations on each proposal, and there will be no consensus advice. Their recommendations and evaluations will be considered by the Federal Program Officers for Sea Grant, the Service, and MARAD, who will:

(1) Ascertain which proposals best meet the program priorities, as described in Section II under Resource Availability and Priorities, giving consideration to geographic distribution and representation, maintaining a balanced program of research, and no unnecessarily duplicating other projects that are currently funded or are approved for funding by NOAA, DOI, and other State and Federal agencies (hence, awards may not necessarily be made to the proposals receiving the highest technical evaluation scores);

(2) Select the proposals to be funded or for which use of a MARAD ship will be granted;

(3) Determine which components of the selected projects will be funded or performed on a MARAD ship;

(4) Determine the total duration of funding or MARAD ship use for each proposal; and,

(5) Determine the amount of funds available for each proposal.

Federal Program Officers from Sea Grant and the Service will make the final determinations concerning proposals for funding. Federal Program Officers from MARAD, Sea Grant, and the Service will work together to reach decisions, but the final responsibility for making decisions in each program area rests with the Federal Program Officer of the agency that is funding or supporting that area.

Investigators may be asked to respond to questions or modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current DOC or DOI grants procedures. A summary statement of the technical evaluation by the peer panel will be provided to each applicant.

VI. Instructions for Application for Funding

Although investigators are not required to submit more than 3 copies of each proposal, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process, if it does not cause a financial hardship, if they wish all reviewers to receive color, unusually sized (not 8.5″x11″), or

otherwise unusual materials submitted as part of the proposal. Only three copies of the federally required forms are needed. Facsimile transmissions of proposals will not be accepted. Proposals on electronic media will be accepted ONLY if:

—Three copies of all federally required forms are submitted in paper copy with appropriate signatures;
—The proposal is submitted on physical media such as removable disk or CD–ROM disk (e-mail proposals will not be accepted);
—The disk is accompanied by one paper copy of the entire proposal (including a signed title page), and a signed letter identifying the file name of the electronic proposal, and warranting that the electronic file is identical to the submitted paper copy; and,
—The format of the proposal and the physical media used are readable and printable by equipment available at the Sea Grant office, and when printed out meets all formatting requirements below. (The office can read and print files in ASCII plaintext, Acrobat PDF, WordPerfect 9 and Microsoft Word 2000 formats. Contact Dorn Carlson, listed under **FOR FURTHER INFORMATION CONTACT,** above, with questions about electronic capabilities of the sea Grant office).

All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210mm × 297mm) or 8.5″ × 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs, and other pictorial presentations, are included in the 15-page limitation for the Project Description. As noted below, literature cited, budget information, current and pending support, vitae of investigators, and letters of support, if any, are not considered part of the Project Description and are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced.

All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative. The Principal Investigators and collaborators and the institutional representative should be identified by affiliation and contact information. The total amount of Federal funds being requested should be listed for each budget period; for projects involving multiple institutions, the total should include all subrecipient budgets.

(2) Project Summary: It is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the following information:

1. Title: Use the exact title as it appears in the rest of the applications.

2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator.

3. Funding: Funding request for each year of the project, Including matching funds if appropriate.

4. Project Period: Start and completion dates. Proposals should request a start date of November 1, 2002, or later.

5. Project objectives, methodology, and rationale: This should be a brief statement of the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) contributions that the study will make to the particular discipline or subject area; (iii) contributions and impacts the study will make toward ballast water technology development; and (iv) as appropriate, contributions of investigator's previously funded research results to current proposal.

This section should also include a discussion of the prior technical research that indicates the likelihood of success of the proposed project. If the proposal is for a pilot-scale project, this discussion should include a description of laboratory experiments on the proposed technology, and the results of those experiments; if the proposal is for a full-scale project, the discussion should include prior laboratory- and pilot-scale experiments and results. Wherever possible, cite the peer-reviewed literature where these results were published.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) plan of work—discuss how stated project objectives will be achieved; and (iii) role of project personnel.

Research Protocol. Research activities funded under this program must not accelerate the spread of aquatic nuisance species to non-infested watersheds. Therefore, if the proposed project involves the use of ballast water or simulated ballast water to which living organisms are added that are not already established at the site of the project, or if the project involves increasing the population or viability of living ballast water organisms that are not already established at the site of project, the proposal must describe the research protocol that will be used to assure that these organisms are not released to the environment in a viable state. This research protocol provided may be reviewed by an interagency committee created under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*). Proposals lacking a suitable protocol may not be eligible for funding. (Proposals that do not involve addition, concentration, enrichment, or increasing the viability of living organisms do not need to include this research protocol.) Guidelines for developing suitable protocols are available from the internet Web site *http://www.ANSTaskForce.gov/resprot.htm,* or from Dorn Carlson, listed under **FOR FURTHER INFORMATION CONTACT,** above).

(c) Output: Describe the project outputs and impacts that will directly enhance the Nation's ability to reduce the impacts of aquatic nuisance species in ballast water. Describe the contribution of the project to the ultimate successful widespread availability and field use of a mature ballast water technology.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

If the proposal involves the discharge of any chemical, such as a biocide or water modifying agent, or chemical decomposition products or residuals, into waters of the United States, describe the coordination with the appropriate State environmental or natural resource agency responsible to determine if a discharge permit is needed and will be issued.

If the proposal involves the discharge of unexchanged ballast water originating beyond U.S. Exclusive Economic Zone into waters of the Great Lakes or the Hudson River, describe the coordination with the U.S. Coast Guard to determine if an approval under regulations at 33

CFR part 151 subpart D, is needed and will be issued.

If the proposal involves the installation of prototype equipment on an operating ship, describe the coordination with the U.S. Coast Guard concerning whether approval is needed.

If the proposal involves the discharge of bassast water in any jurisdiction that places other limitations or conditions on that discharge, describe the coordination with the agency responsible for determining if that discharge meets those limitations or conditions.

(e) Vessel Selection (if appropriate): Applications proposing shipboard demonstrations of ballast water management should address the requirements and priorities listed in the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) for selecting vessels for demonstration projects. These requirements are available through the Sea Grant Web site (*www.nsgo.seagrant.org/research/nonindigenous/RFP02.html*) or from Dorn Carlson at the National Sea Grant Office or Debra Aheron U.S. Maritime Administration (listed under **FOR FURTHER INFORMATION CONTACT,** above). Additionally, applicants must indicate whether they are coordinating with MARAD with respect to using a MARAD ship.

(4) Literature Cited.

(5) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own from as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated if provided. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For those applications to be supported by Sea Grant, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(6) Current and Pending Support: Applicants must provide information on all current and pending Federal support of ongoing projects and proposals, including subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using Federal assistance and requiring a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within the Departments of Commerce, the Interior, and Transportation.

(7) Vitae (2 pages maximum per investigator).

(8) Standard Application Forms: Applicants may obtain all required application forms through the Sea Grant Web site: *(www.nsgo.seagrant.org/research/rfp/index.html#3)* or from Dorn Carlson at the National Sea Grant Office (listed under **FOR FURTHER INFORMATION CONTACT** above) or for purposes of using a MARAD ship, from Debra Aheron, U.S. Maritime Administration (listed under **FOR FURTHER INFORMATION CONTACT** above).

Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. Leave section 10 blank.

VII. Instructions for Applications for Use of a MARAD Ship

Applications for shipboard testing must satisfy all MARAD requirements for the use of their ships as test platforms. For purposes of this test phase, ships cannot be moved from their existing locations. However, testing may be conducted under certain conditions during temporary vessel movements such as sea trials. Applicants for use of a MARAD ship (for Ballast Water technology projects) must submit a Standard Form 424 containing the name, affiliation, address and phone number of the principal investigator requesting the use of a MARAD ship. The applicant must also provide:

(1) The type and location of the ship required, from a list of available ships (obtainable from Debra Aheron, listed under **FOR FURTHER INFORMATION CONTACT** above), and the projected time and duration of tests.

To assure timely ship assignments, applicants are strongly urged to contact Ms. Aheron, listed under **FOR FURTHER INFORMATION CONTACT** by June 20, 2002, to discuss ship availability and ship use requirements.

(2) A description of the project proposed to be conducted on the ship. If the applicant is also applying for funding under this Request for Proposals to support this project, a copy of the complete application for funding submitted may be provided as the description of the project. In response to this application, MARAD will open a dialog with the applicant, during which additional information relating to the logistical and other requirements of the project will be required of the applicant.

VIII. Other Requirements for Successful Applicants

In addition to producing an annual progress report and a final report, successful applicants will be expected to attend an annual ballast water investigators meeting in the continental United States, probably in the fall, during each year that the project is ongoing. Applicants should consider travel costs to these meetings when preparing their budgets.

Successful applicants for use of a MARAD ship will be required to enter into a Memorandum of Agreement (MOA) or contract with MARAD, which will address in detail MARAD requirements for the use of their ships as test platforms. Shipboard installations for the testing purposes shall be temporary in nature; successful applicants shall be required to dismantle all temporary installations during ship activation, if any, at the end of testing and reinstall any equipment removed during the temporary installation. Temporary installations must not impact the ship's and its safety at any time during the installation, removal, and testing. Applicants will be required to submit proof of insurance as requested under the MOA.

All Department of the Interior assistance awards are subject to the requirements of 43 CFR part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. *See Building*

and Construction Trades Department v. *Allbaugh,* 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Projects selected for funding by Sea Grant in Sea Grant states may be administered through the Sea Grant Program from that state. Unsuccessful applications will be held in the National Sea Grant Office for a period of five (5) years and then destroyed.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices/OCR/minorityinst.html.*

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424B, and SF–LLL has been approved by OMB under the respective control numbers 0338–0043, 0348–0040, and 0348–0046. The use of NOAA Forms 90–2 and 90–4, or equivalents, has been approved by OMB under the control number 0648–0362. Public reporting burden for these NOAA forms is estimated to average 20 minutes for a NOAA Form 90–2 and 15 minutes for a NOAA Form 90–4. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the National Sea Grant Office (*see* **FOR FURTHER INFORMATION CONTACT,** above).

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

IX. Classification

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

It has been determined that this notice is not significant for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: May 31, 2002.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

Dated: April 19, 2002.

Cathleen Short,

Assistant Director for Fisheries, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: May 10, 2002.

Margaret D. Blum,

Associate Administrator for Ports, Intermodal and Environmental Activities, U.S. Maritime Administration, Department of Transportation.

Dated: May 15, 2002.

James E. Caponiti,

Associate Administrator for National Security, U.S. Maritime Administration, Department of Transportation.

[FR Doc. 02–14102 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1-year letter of authorization to take small numbers of seals and sea lions was issued on May 31, 2002, to the 30th Space Wing, U.S. Air Force.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, Office of Protected Resources, NMFS, (301) 713–2322, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Issuance of this letter of authorization is based on a finding that the total takings will have no more than a

negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: May 31, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–14236 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052402B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of permit 1387.

SUMMARY: Notice is given that NMFS has issued permit 1387 to Thomas Gaffney, Special Agent of the NMFS Office of Law Enforcement in Santa Maria, California, that authorizes takes of Endangered Species Act-listed anadromous fish species for enhancement purposes (rescue and salvage), subject to certain conditions set forth in this document.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404–6528.

FOR FURTHER INFORMATION CONTACT: Daniel Logan, Protected Resources Division, NMFS, Santa Rosa, California, (707) 575–6053, or e-mail: dan.logan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

The following species and evolutionarily significant units (ESUs) are covered in this notice: Southern California steelhead (*Oncorhynchus mykiss*) ESU.

Issuance of this permit, as required by the ESA, was based on a finding that such issuance (1) was applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with, and is subject to, part 222 of title 50 CFR, the NMFS' regulations governing listed species permits.

Thomas Gaffney has monitored water quality in Mission Creek and has noted that conditions are deteriorating rapidly and that the stream is drying. Gaffney, having observed steelhead in residual pools in the stream, and dead steelhead in some pools, believes that the remaining live steelhead cannot leave the pools and will perish without intervention. The NMFS SWR believes that, because the health and life of the animals are in danger, the issuance of permit 1387 is an urgent action and sufficient to qualify as an emergency situation consistent with CFR 222.303(g).

Permit Issued

Permit 1387 was issued on May 22, 2002. This permit includes the following take limits: (1) Thomas Gaffney is authorized to rescue up to 250 ESA-listed juvenile Southern California steelhead from habitat areas where conditions are likely to result in imminent mortality; (2) Thomas Gaffney is authorized to transport and release rescued steelhead into NMFS-approved habitat areas within the same watershed where the chance of long-term survival is increased; (3) Thomas Gaffney is authorized to take tissue samples from all rescued fish; and (4) the expiration date of Permit 1387 is December 31, 2002.

Dated: May 31, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–14237 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 24–2002]

Foreign-Trade Zone 93—Raleigh/Durham, NC, Application for Foreign-Trade Subzone Status, General Electric Aircraft Engines (Gas Turbine Engines), Research Triangle Park/Durham, NC

An application has been submitted to the Foreign-Trade-Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the manufacturing and distribution facilities (gas turbine engines) of General Electric Aircraft Engines (GEAE) in Research Triangle Park/Durham, North Carolina. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 28, 2002.

The GEAE facilities are located at 3701 South Miami Boulevard, Research Triangle Park/Durham, North Carolina (six buildings/513,273 square feet on 512 acres). The facilities (150 employees) are used for the development, manufacture, and distribution of gas turbine engines and engine parts for aerospace, marine, and industrial applications. Foreign-source materials account for approximately 10 to 20 percent of finished-product value, and may include items from the following categories: plastic or rubber tubes, plates, and other articles; fiberglass sheets; stainless steel wire: iron or steel tubes or fittings; stranded wire products; iron or steel fasteners; nickel or nickel-alloy products; aluminum wire and fittings; cobalt mattes; titanium nuts, bolts, screws, tubes, sleeves, and bars; articles of chromium and rhenium; base metal fittings, tubing, and stoppers; pumps for liquids and parts thereof; heat exchange units; centrifuges; valves and parts thereof; bearings and parts thereof; transmission shafts and parts thereof; gaskets; electric motors; electrical inductors and ignition equipment; signaling equipment; electrical switches and relays; insulated wire and cable; ceramic insulators; counters and other instruments; measuring or checking instruments; and lamps and lighting fittings.

Zone procedures would exempt GEAE from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 2.5%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 15%). In addition, GEAE states that it would realize logistical/procedural and other benefits. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones

Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is August 5, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 20, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade-Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 5 West Hargett Street, Suite 600, Raleigh, NC 27601.

Dated: May 29, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–14074 Filed 6–5–02; 8:45 am]

BILLING CODE 3510–05–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, June 26, 2002.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–14347 Filed 6–4–02; 2:47 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46009]

Joint Order Excluding From the Definition of Narrow-Based Security Index Those Security Indexes That Qualified for the Exclusion From That Definition Under Section 1a(25)(B)(v) of the Commodity Exchange Act and Section 3(a)(55)(C)(v) of the Securities Exchange Act of 1934

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint order.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively ''Commissions'') by joint order under the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') are excluding certain security indexes from the definition of ''narrow-based security index.'' Specifically, the Commissions are excluding from the definition of the term ''narrow-based security index'' those security indexes that qualified for the exclusion from that definition under Section 1a(25)(B)(v) of the CEA and Section 3(a)(55)(C)(v) of the Exchange Act, pursuant to authority under Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act.

EFFECTIVE DATE: June 21, 2002.

FOR FURTHER INFORMATION CONTACT: *CFTC:* Elizabeth L. Ritter, Esq., Deputy General Counsel, or Julian E. Hammar, Esq., Attorney, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5120. E-mail: *Eritter@cftc.gov, Jhammar@cftc.gov.*

SEC: Ira L. Brandriss, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001. Telephone (202) 942–0148.

SUPPLEMENTARY INFORMATION: The Commodity Futures Modernization Act (''CFMA''),[1] which became law on December 21, 2000, establishes a framework for the joint regulation of the trading of futures contracts on single securities and on narrow-based security indexes (collectively, ''security futures'') by the CFTC and the SEC. Previously, these products generally were statutorily prohibited from trading in the United States. Under the CFMA, designated contract markets and registered derivatives transaction execution facilities (''DTEFs'') may trade security futures if they register with the SEC and comply with certain other requirements of the Exchange Act.[2] Likewise, national securities exchanges and national securities associations registered under Section 15A(a) of the Exchange Act [3] may trade security futures if they register with the CFTC and comply with certain other requirements of the CEA.[4]

To distinguish between security futures on narrow-based security indexes, which are jointly regulated by the Commissions, and futures contracts on broad-based security indexes, which are under the exclusive jurisdiction of the CFTC, the CFMA also amended the CEA and the Exchange Act by adding an objective definition of ''narrow-based security index.'' [5]

This definition excludes from its scope certain security indexes that satisfy specified criteria. A futures contract on an index that meets the criteria of any of the six exclusions from the definition of narrow-based security index is not a security future under the securities laws, and thus is subject solely to the jurisdiction of the CFTC.

One such exclusion was enacted by Congress essentially as a temporary ''grandfather'' provision, permitting the offer and sale in the United States of security index futures traded on or subject to the rules of foreign boards of trade that were authorized by the CFTC before the CFMA was enacted.[6] Specifically, this exclusion provides that, until June 21, 2002, a security index is not a narrow-based security index if: (1) It is traded on or subject to the rules of a foreign board of trade; (2) the offer and sale in the United States of a futures contract on the index was authorized before the date of enactment of the CFMA; and (3) the conditions of such authorization continue to be met.[7]

Because the Commissions' staffs previously determined that such foreign index futures were not readily susceptible to manipulation, such index futures commenced trading under the

[1] Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 78*o*–3(a).

[4] 7 U.S.C. 1 *et seq.*

[5] Section 1a(25) of the CEA, 7 U.S.C. 1a(25), and Section 3(a)(55) of the Exchange Act, 15 U.S.C. 78c(a)(55).

[6] Prior to the effective date of the CFMA, these futures contracts were offered to U.S. customers pursuant to no-action letters issued by the CFTC and its staff, to which the SEC did not object. *See infra* note 8.

[7] Section 1a(25)(B)(v) of the CEA and Section 3(a)(55)(C)(v) of the Exchange Act.

regulatory framework in place prior to enactment of the CFMA. Therefore, to prevent disruption to participants who trade futures contracts on security indexes that are currently excluded from the definition of a narrow-based security index under this provision, the Commissions believe it is appropriate to extend this exclusion beyond June 21, 2002. In this regard, the Commissions believe it is appropriate to establish, under section 1a(25)(B)(vi) of the CEA and section 3(a)(55)(C)(vi) of the Exchange Act, that each such index continue to be excluded from the definition of a narrow-based security index, provided that it continues to be traded on or subject to the rules of a foreign board of trade and that the conditions under which the offer and sale of a futures contract on the index in the United States was authorized continue to be met.[8]

Accordingly,

It is ordered, pursuant to Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act, that an index is not a narrow-based security index if: (1) It is traded on or subject to the rules of a foreign board of trade; (2) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the CFMA; and (3) the conditions of such authorization continue to be met.

By the Commodity Futures Trading Commission.

Dated: May 31, 2002.

Jean Webb,

Secretary.

By the Securities and Exchange Commission.

Dated: May 31, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14134 Filed 6–5–02; 8:45 am]

BILLING CODE 6351–01–P; 8010–01–P

[8] For a list of security indexes underlying futures contracts that have received no-action relief prior to the enactment of the CFMA, see the CFTC's Backgrounder on its website at http://www.cftc.gov/opa/backgrounder/opapart30.htm.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0073]

Federal Acquisition Regulation; Submission for OMB Review; Advance Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning advance payments. A request for public comments was published in the **Federal Register** at 67 FR 17676 on April 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 8, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (*see* FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Annual Responses: 500.
Hours Per Response: 1.
Total Burden Hours: 500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: May 31, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–14150 Filed 6–5–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Submission for OMB Review; Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved

information collection requirement concerning Payments. A request for public comments was published at 67 FR 17675 on April 11, 2002. No comments were received.

DATES: Submit comments on or before July 8, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.

Responses Per Respondent: 120.

Annual Responses: 9,600,000.

Hours Per Response: .025.

Total Burden Hours: 240,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: May 31, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–14151 Filed 6–5–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Prospective Grant of Two Partially Exclusive Patent Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), Army Research Laboratory (ARL) hereby gives notice that it is contemplating the grant of two partially exclusive licenses in the United States to practice the invention embodied in U.S. Patent 5,876,960, ''Bacterial Spore Detection and Quantification Methods, to the following small businesses: Nomadics, Inc., 1024S Innovation Way, Stillwater, OK 74074 and Ocean Optics, Inc., 380 Main Street, Dunedin, FL 34698.

This technology relates to methods for the detection and quantification of bacterial spores in a sample medium.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Cammarata, Technology Transfer Office, U.S. Army Research Laboratory, ATTN: AMSRL–DP–T, Powder Mill Road, Adelphi, MD 20783–1197, Phone: (301) 394–2952 or e-mail: *normac@arl.army.mil*

SUPPLEMENTARY INFORMATION: The prospective partially exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective partially exclusive licenses may be granted, unless ARL recieves written evidence and argument to establish that the grant of the lincese would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 by 21 June 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–14229 Filed 6–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Recombinant DNA Molecules for Producing Terminal Transference-Like Polypeptides

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 5,037,756 entitled ''Recombinant DNA Molecules for Producing Terminal Transference-Like Polypeptides,'' issued August 6, 1991. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention concerns an isolated DNA sequence encoding human terminal deoxynucleotidyl transferase as well as vectors and transformed hosts carrying said DNA sequence.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–14228 Filed 6–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Site-Directed Mutagenesis of Esterases

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,001,625 entitled ''Site-Directed Mutagenesis of Esterases,'' issued December 14, 1999. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A method of modifying esterases by substitution with histadine of at least one amino acid within 6 A° of an active site serine provides esterases useful for detoxifying organophasphates.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–14227 Filed 6–5–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Malibu Creek Enrivonmental Restoration Feasibility Study, Los Angeles County, CA

AGENCY: Department of Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers will prepare an Environmental Impact Statement (EIS) to support the Malibu Creek Environmental Restoration Feasibility Study, Los Angeles County, CA. Approximately two-thirds of the watershed is in Los Angeles County while the remaining one-third is in Ventura County. The feasibility study area is the Rindge Dam, which is located 2 miles upstream of Malibu Lagoon, and the areas immediately upstream and downstream of the dam. This study will investigate feasible alternatives to restore the Malibu Creek ecosystem, primarily by removing Rindge Dam. Also, feasible alternatives for the removal of sediment behind the dam and the beneficial use of that sediment will be investigated.

The Draft EIS (DEIS) will analyze the potential environmental impacts (beneficial and adverse) of a range of alternatives, including the proposed action and the no action alternative. The Los Angeles District and California Department of Parks and Recreation will cooperate in conducting this feasibility study.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ (B. Hulkower), P.O. Box 532711, Los Angeles, CA 90035–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Hulkower, Environmental Coordinator, telephone (213) 452–3861, or Mr. Jason Shea, Study Manager, telephone (213) 452–3794.

SUPPLEMENTARY INFORMATION:

1. Authorization

This feasibility study was authorized by a resolution adopted by the U.S. House of Representatives Committee on Public Works and Transportation, dated 5th February 1992, which states, in part: ''that the Board of Engineers is requested to review the report of the Chief of Engineers on Point Magu to San Pedro Breakwater, California Beach Erosion Control Study, published as House Document 277, 83rd Congress, 2nd Session, and other pertinent reports, to determine whether any modifications of the recommendations contained therein are advisable at the present time, in the interest of shore protection, storm damage reduction, and other purposes along the shores of Southern California from Point Mugu to the San Pedro Breakwater and nearby areas within Ventura County and Los Angeles County, California.''

2. Background

Malibu Creek is located approximately 30 miles west of downtown Los Angeles, California. The drainage area covers approximately 109 square miles of the Santa Monica Mountains and Simi Hills. The feasibility study area currently includes the Rindge Dam, which is located 2 miles upstream of Malibu Lagoon. The non-federal sponsor of the feasibility study is the California Department of Parks and Recreation.

The Rindge family constructed Rindge Dam in the Mid 1920's. The purpose of the dam was to provide approximately 574 acre-feet of water storage for agricultural needs. Rindge Dam is a concrete arch structure 90 feet in height with an arc length of 175 feet at its crest. Sediment carrier by Malibu Creek has deposited behind the dam and filled the reservoir, rendering the structure useless as a water storage facility. It is estimated that approximately 700,000 cubic yards of sediment lies trapped behind the dam.

Rindge Dam no longer serves the purpose that it was originally created for. It neither provides water storage nor flood control protection due to sedimentation behind the dam. During peak events, the entire flow of Malibu Creek rises over the dam's crest. However, the dam does provide bank stability protection since its construction created a milder slope along the Malibu Creek. This requires some consideration as removing the dam could potentially cause the channel banks to erode.

Presently, the dam is considered to be a contributing factor of the declining numbers of steelhead trout in the Malibu Creek Watershed. If no action is taken to secure passage for the steelhead trout to reach the upper watershed and its tributaries, the dam will continue to obstruct this endangered species from reaching the upstream portion of the watershed, thereby limiting the amount of spawning and rearing habitat.

3. Alternatives

The feasibility study will focus on addressing the problems and needs caused by Rindge Dam with the primary objective of the feasibility study being to restore the Malibu Creek ecosystem. Other objective that are considered appropriate may involve possible beneficial use of the sediment behind the dam for beach nourishment or other environmental restoration.

In general, alternative plans will investigate reasonable alternatives to restore Malibu Creek, primarily by removing Rindge Dam. Feasible alternatives for the removal of sediment behind the dam and the beneficial use of that sediment will also be investigated. Significant beneficial impacts to the riparian ecosystem (especially to steelhead trout) are expected from restoration alternatives identified in the feasibility study.

4. Scoping Process

Participation of all interested Federal, State, and County agencies, groups with environmental interests, and any interested individuals are encouraged. Public involvement will be most beneficial and worthwhile in identifying the scope of pertinent, significant environmental issues to be addressed, offering useful information such as published or unpublished data, providing direct personal experience or knowledge which informs decision making, and recommending suitable mitigation measures to offset potential impacts from the proposed action or alternatives.

A public scoping meeting was held on May 29, 2002, from 7 until 9 p.m. at the Las Virgenes Municipal Water District Training Room, 4232 Las Virgenes Road, Calabasas, CA, as advertised in local newspapers. The purpose of the scoping meeting was to gather information from the public or interested organizations about issues and concerns that they would like to see addressed in the DEIS. The Los Angeles District is accepting comments delivered or sent in writing to the address above. The scoping period will conclude August 5, 2002.

5. Availability of the DEIS

The DEIS is expected to be available to the public for review and comment beginning in the spring of 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–14230 Filed 6–5–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 30, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: Lender's Request for Payment of Interest and Special Allowance (JS) *.

Frequency: Quarterly, Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary) Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 17,200.

Burden Hours: 41,925.

Abstract: The Lender's Interest and Special Allowance Request (Form 799) is used by approximately 4,300 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2022. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his Internet address *joe.schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Student Financial Assistance

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL), Direct Loan, and Perkins Loan Discharge Applications.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 70,200.

Burden Hours: 35,100.

Abstract: These forms will serve as the means of collecting the information necessary to determine whether a FFEL or Direct Loan borrower qualifies for a loan discharge based on total and permanent disability, school closure, false certification of student eligibility, or unauthorized signature. The school closure discharge application may also be used by Perkins Loan borrowers applying for a closed school discharge. Public comment should be made on the 4 forms included for this package. The forms for the Permanent Disability Discharge Form is being cleared separately.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 1877. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his Internet address *joe.schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–14156 Filed 6–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.351B]

The Cultural Partnerships for At-Risk Children and Youth Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Cultural Partnerships for At-Risk Children and Youth Program, authorized under Subpart 15 of Part D of Title V of the Elementary and Secondary Education Act (ESEA), as amended by Public Law

107–110, the No Child Left Behind Act of 2001, supports school-community partnership programs designed to improve the educational performance of at-risk children by providing arts education services and programs, especially programs incorporating arts education standards.

Eligible Applicants: A local educational agency (LEA), acting on behalf of an individual school or schools in which 75 percent or more of the children enrolled in such school(s) are from low-income families based on data used in determining a school's eligibility to operate a schoolwide program pursuant to Title I Section 1114 of the ESEA, in partnership with at least one institution of higher education, museum, local arts agency, or cultural entity that is accessible to individuals within the school district of such school(s) and that has a history of providing quality services to the community. Such entities may include: (i) Nonprofit institutions of higher education, museums, libraries, performing, presenting and exhibiting arts organizations, literary arts organizations, State and local arts organizations, cultural institutions, and zoological and botanical organizations; or (ii) private for-profit entities with a history of training children and youth in the arts. To be eligible, such partnerships shall serve: (1) Students enrolled in schools participating or eligible to participate in a schoolwide program under ESEA Title I Section 1114 and, to the extent practicable, the families of such students; (2) out-of-school children and youth at risk of disadvantages resulting from teenage parenting, substance abuse, recent migration, disability, limited English proficiency, illiteracy, being the child of a teenage parent, living in a single parent household, or dropping out of school; or (3) any combination of in-school and out-of-school at-risk children and youth. Any school or schools to be served through grants received under this program must submit evidence for inclusion in the grant application to the Secretary demonstrating that the school or schools meet the poverty criteria described above. Applicants may submit records kept for the purpose of ESEA Title I that provide proof of eligibility for each school to be served or to participate in the partnership.

Note: The LEA must serve as the fiscal agent for the program.

Applications Available: June 6, 2002.

Deadline for Transmittal of Applications: July 22, 2002.

Deadline for Intergovernmental Review: September 19, 2002.

Available funds: Approximately $4,000,000.

Estimated Number of Awards: 15–20.

Estimated Size of Awards: $200,000–$400,000.

Average Size of Awards: $300,000.

Project Period: up to 36 months.

Note: The Department of Education is not bound by any estimates in this notice. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (34 CFR 75.253).

General Requirements:

Page Limit Requirement: The program narrative is limited to no more than 40 pages. The page limit applies to the narrative section only, however, all of the application narrative must be included in the narrative section. If the narrative section of an application exceeds the page limitation, the application will not be reviewed. In addition, the following standards are required: (1) Each ''page'' is 8.5″ x 11″ (on one side only) with one inch margins (top, bottom, and sides); (2) double space (no more than three lines per vertical inch) all text in the application narrative including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs; and (3) use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Project Directors' Meeting: The projects funded under this priority are required to budget for a two-day project directors' meeting in Washington, DC.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99.

E-mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than July 8, 2002. The e-mail notification should be sent to Ms. Madeline Baggett at *madeline.baggett@ed.gov.* Applicants that fail to provide this e-mail notification may still apply for funding.

SUPPLEMENTARY INFORMATION:

Partnership Purposes

At-risk children and youth are generally less likely to have access to and participate in arts education programs, which are often inadequately funded in high-poverty rural and urban areas. Therefore, the Cultural Partnerships for At-Risk Children and Youth Program will support the development of school-community partnership programs that coordinate and integrate local, State, and Federal resources for arts education and enrichment into a service delivery system for at-risk children and youth. The projects funded under this program will support the following program outcomes for both in- and out-of-school at-risk children and youth:

Increased access to and participation in high-quality, standards-based arts education programs and enrichment activities linked to academic improvement, including performance on State, locally-developed, and standardized tests;

Improved student academic performance through participation in high-quality arts education programs; and Increased range in the types of arts education programs and activities available, for example, a variety of music programs in addition to drama and dance.

At the end of the project period, the Department will consider disseminating information on successful approaches for developing, enhancing, or expanding cultural partnerships designed to improve the educational performance of at-risk children and youth through comprehensive and coordinated educational programs and services. This will include evidence of improved educational achievement (i.e., test scores or other academic measures) of at-risk students, along with information regarding the arts education programs and methodologies linked to such improvements.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt rules governing the first competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This competition is the first Cultural Partnerships competition under the reauthorized Arts in Education program as amended by Public Law 107–110, the No Child Left Behind Act

of 2001, and therefore qualifies for this exemption. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These rules will apply to the FY 2002 grant competition only.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to partnership programs that focus school and cultural resources in the community on coordinated arts education services to address the needs of at-risk middle and high school-aged children and youth both in- and out-of-school. In addition, the project must fully address all of the desired outcomes for at-risk children and youth as described under the Partnership Purposes section of this notice.

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet the absolute priority.

Coordination Requirement: Under section 5551(f)(1) of the authorizing statute the Secretary requires that each applicant funded under this competition coordinate, to the extent practicable, each project or program carried out with such assistance with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

Supplement, Not Supplant, Requirement: Under section 5551(f)(2) of the authorizing statute, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, other assistance or funds made available from non-Federal sources for the activities assisted under this subpart.

Selection Criteria: The Secretary will use the following selection criteria to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance* (15 Points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and learning.

(b) *Improvement in the Educational Achievement of At-Risk Youth* (15 points). Under 34 CFR 75.209(a)(1)(ii), the Secretary reviews each application to determine the manner in which the partnership will improve the educational achievement of at-risk youth through services designed to: (1) Enhance student academic performance in core academic subjects and on standardized tests; and (2) foster the academic potential of at-risk students.

(c) *Quality of the Project Design* (20 points). (1) The Secretary considers the quality of the project design of the proposed project.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent to which the proposed project meets the priority or priorities established for the competition.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable and appropriate to the needs of the intended recipients of the project services.

(iii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of Project Personnel* (10 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of Resources* (10 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the Management Plan* (15 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring continuous feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project.

(g) *Quality of the Project Evaluation* (15 points). (1) The Secretary considers the quality of the project evaluation.

(2) In determining the quality of the project evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation include objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp.* Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.351B.

For Technical Assistance on Program Requirements Contact: Madeline E. Baggett, U.S. Department of Education, FB–6, Room 3E228, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone (202) 260–2502 or via internet: *Madeline.Baggett@ed.gov.*

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Authority: Program Authority: 20 U.S.C. 7271.

Dated: May 31, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–14124 Filed 6–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.362A]

Native Hawaiian Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of the Program: The purpose of the Native Hawaiian Education program is to support innovative projects that provide supplemental services that address the educational needs of Native Hawaiian children and adults. The reauthorized program consolidates, under a single authority, the previously authorized Native Hawaiian programs and supports an expanded range of program activities.

Eligible Applicants: Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instructions in the Native Hawaiian language; and consortia thereof.

Applications Available: June 6, 2002.

Deadline for Transmittal of Applications: July 8, 2002.

Deadline for Intergovernmental Review: September 4, 2002.

Estimated Available Funds: $10.1 million. Of this amount, we will award approximately $5.6 million under absolute priority 1 (family-based education centers); approximately $2.7 million under absolute priority 2 (curriculum development); approximately $1 million under absolute priority 3 (college preparation and scholarship support); approximately $650,000 under absolute priority 4 (gifted and talented); and approximately $200,000 under absolute priority 5 (community-based learning centers).

Estimated Number of Awards: 7 under absolute priority 1; 5 under absolute priority 2; 3 under absolute priority 3; 1 under absolute priority 4; and 1 under absolute priority 5.

Estimated Average Size of Awards: $200,000–$1,000,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 86, 97, 98, and 99.

Absolute Priorities: In the conference report accompanying the FY 2002 appropriations legislation, Congress urged the Department to support Native Hawaiian education activities in certain specifically identified areas. In response to this request, the Secretary establishes the following separate absolute priorities under 34 CFR 75.105(c)(3) and will fund under this competition only applicants that meet one of these priorities:

Absolute Priority 1—Family-Based Education Centers—The applicant will use the funds received under this competition to support the operation of a family-based education center that provides such services as—

(a) Programs for Native Hawaiian parents and their infants from the prenatal period of the infants through age three;

(b) Preschool programs for Native Hawaiians; and

(c) Research on, and development and assessment of, family-based, early childhood, and preschool programs for Native Hawaiians.

Absolute Priority 2—Curriculum Development—The applicant will use the funds received under this competition to develop academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture.

Absolute Priority 3—College Preparation and Scholarship Support—The applicant will use funds received under this competition to support activities, including co-location, that enable Native Hawaiians to enter and complete programs of postsecondary education, such as—

(a) Provision of full or partial scholarships for undergraduate or graduate study that are awarded to students based on their academic promise and financial need, with a priority, at the graduate level, given to students entering professions in which Native Hawaiians are underrepresented;

(b) Family literacy services;

(c) Counseling and support services for students receiving scholarship assistance;

(d) Counseling and guidance for Native Hawaiian secondary students who have the potential to receive scholarships;

(e) Faculty development activities designed to promote the matriculation of Native Hawaiian students; and

(f) Co-location projects that provide Native Hawaiian secondary students and adults a one-stop delivery system under which they can access in a single location a comprehensive range of services that will assist them in entering and completing programs of postsecondary education.

Absolute Priority 4—Gifted and Talented—The applicant will use the funds received under this competition to support activities that address the special needs of Native Hawaiian students who are gifted and talented, such as—

(a) Educational, psychological, and developmental activities designed to

assist in the educational progress of those students; and

(b) Activities that involve the parents of those students in a manner designed to assist in the students' educational progress.

Absolute Priority 5—Community-Based Learning Centers—The applicant will use the funds received under this competition to support the operation of one or more community-based learning centers that address the needs of Native Hawaiian families and communities through the coordination of public and private programs and services, including—

(a) Preschool programs;

(b) After-school programs;

(c) Vocational and adult education programs; and

(d) Programs that recognize and support the unique cultural and educational needs of Native Hawaiian children and incorporate appropriately qualified Native Hawaiian elders and seniors.

Competitive Preference: The legislation at 20 U.S.C. 7515(a)(2) establishes specific statutory priorities. In implementing these statutory priorities, the Secretary establishes a competitive preference under 34 CFR 75.105(c)(2) for this competition and will award an applicant, in addition to any points that an applicant earns under the selection criteria, five points if it proposes a project that is designed to address one or more of the following:

(a) Beginning reading and literacy among students in kindergarten through third grade;

(b) The needs of at-risk children and youth;

(c) Needs in fields or disciplines in which Native Hawaiians are underemployed; and

(d) The use of the Hawaiian language in instruction.

An applicant that addresses one or more of these competitive priorities will receive a total of five additional points in the competition. If an applicant addresses more than one competitive priority, it will only receive a total of five additional competitive preference points, rather than five competitive preference points for each of the priorities addressed.

For Applications and Information Contact: Mrs. Lynn Thomas, (202) 260–1541, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C124, Mail Stop 6140, Washington, DC 20202. The e-mail address for Mrs. Thomas is: *lynn.thomas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7515–7517.

Dated: May 31, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–14125 Filed 6–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Transportation Technologies; Notice of Availability of a Financial Assistance Solicitation for Cooperative Agreement Applications for Advanced Liquid Natural Gas Onboard Storage Systems

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for research and development in the area of Advanced Liquid Natural Gas (LNG) Onboard Storage Systems (ALOSS). This solicitation will be for Phase I applications only but will describe some aspects of possible Phase II awards as reference information. Phase I activities will provide laboratory proof-of-concept of an ALOSS. Tasks under this phase should cover: component and subsystem fabrication, setup of laboratory test stand, component testing, and pilot scale test of the ALOSS. Phase II activities, if awarded, will involve tank certification testing and road testing. (Phase I awardees will be eligible to compete for Phase II funding, which will be based on availability of funds, test data, design and market plan.) It is anticipated that the Phase I efforts will take place over a twelve month period under a cooperative agreement arrangement. DOE expects that one or two cooperative agreements will result from the solicitation. Total Government funding is expected to be approximately $500,000 for all Phase I awards combined. Successful applicants are required to cost share a minimum of 20% of the project cost. It is anticipated that award(s) as a result of the solicitation will be made in September of 2002. It is further anticipated that Phase II funding for this project will be available in the FY2003 budget.

DATES: The solicitation will be available on DOE's ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about June 7, 2002. Prospective applicants are therefore advised to check the above Internet address on a daily basis. All applications must be submitted through IIPS in accordance with the instructions found in the solicitation and the IIPS User Guide, which can be obtained by going to the IIPS Secured Services site at *http://e-center.doe.gov* under the ''HELP'' section of the website. Applicants must register in IIPS prior to submitting an application. Only registered users will have the capability to transmit their applications in a responsive matter. Applicants are strongly encouraged to register with IIPS as soon as possible prior to the application deadline. All applications must have an IIPS transmission time stamp of not later than 11:59 p.m. Eastern Time on the date specified in the solicitation, which is expected to be on or about July 10, 2002. Applicants are advised to begin transmission 24 hours in advance of the deadline in order to prevent any transmission difficulties.

ADDRESSES: The solicitation and any subsequent amendments will be published at the above mentioned Internet address. All applications shall be submitted through IIPS in accordance with the instructions provided in the solicitation.

FOR FURTHER INFORMATION CONTACT: Sharon L. Donaldson, 630/252–0953.

SUPPLEMENTARY INFORMATION: The solicitation, when issued, will include a narrative scope of work, program requirements, qualification criteria, evaluation criteria, and other information. The purpose of this solicitation is to invite interested parties to submit an application for cost-shared cooperative agreements with the Department of Energy (DOE) for research and development of Advanced Liquid Natural Gas (LNG) Onboard Storage Systems (ALOSS) for natural gas vehicles. The solicitation is to accelerate research, development and testing of novel LNG storage technologies that would increase the vehicle's driving range, improve its efficiency and durability, and lower evaporative emissions and costs. The major barrier to using natural gas as a vehicle fuel is the problem of storing sufficient quantities of natural gas onboard the vehicle. The storage of natural gas in its compressed state (CNG) is viable for some vehicles, but does not meet the needs of most Class 7 and 8 trucks and buses. Since Class 7 and 8 trucks and buses use nearly 40% of the country's transportation fuel, it is an important market sector to DOE's Office of Transportation Technologies. By using LNG, the storage problem can be solved. The storage of natural gas in its liquid rather than compressed state increases the driving range of a vehicle by 300%.

The use of LNG introduces the complexity of dealing with a cryogenic liquid. This approach is not new, because the first LNG-fueled buses used cryogenic pumps. However, the technology was later abandoned because of problems relating to durability, consistency of fuel delivery, and excessive vapor venting. In spite of the known problems of using LNG with cryogenic pumps, the benefits are sufficient to warrant revisiting its use. The goal of this solicitation is to reduce the overall complexity of LNG through the development of a simple and reliable onboard cryogenic pump.

The benefits of using a cryogenic pump with low-pressure LNG storage are that it: increases usable fuel in the tank by 25%, eliminates the need for fuel conditioning, simplifies the operation of the refueling station, reduces the atmospheric venting of natural gas, reduces connector leaks, and has the ability to supply fuel to all types of natural gas engines from high pressure direct injected to aspirated. Some of the risks and/or challenges of using an onboard cryogenic pump include: keeping the pump cold at all times, durability, thermal management, meeting transient loads, redundancy, cavitation, and costs.

This solicitation seeks a solution to the problems and challenges described so that the benefits noted above can be realized. DOE's long-term goal is to improve LNG vehicles so that they capture a greater share of the transportation fuel market and thereby lessen U.S. dependency on imported oil.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS; no hard (paper) copies of the solicitation and related documents will be made available.

Issued in Argonne, Illinois, on May 20, 2002.

John D. Greenwood,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 02–14191 Filed 6–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–131–000]

Auburndale Peaker Energy Center, L.L.C.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 31, 2002.

Take notice that on May 2, 2002, Auburndale Peaker Energy Center, L.L.C. (Auburndale) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Auburndale, a Delaware limited liability company, proposes to own and operate a 115 MW simple cycle, electric generating facility located in Polk County, Florida.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14179 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–051]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 31, 2002.

Take notice that on May 21, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction under its Rate Schedule FTS–1:

Service Agreement No. 72806 between Columbia Gulf Transmission Company and Aquila Merchant Services dated May 17, 2002

Transportation service is to commence June 1, 2002 and end October 31, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14188 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065, California]

El Dorado Irrigation District; Notice of Public Meetings

May 30, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process.

On Monday, June 10, the aquatics-hydrology workgroup will meet from 9:00am until 4:00pm. On Tuesday, June 11, meetings will be held as follows:

Plenary Meeting 9:00am—12:00 noon; Recreation Workgroup1:00pm—4:00pm.

The workgroup meetings will focus on further defining interests and the development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the Best Western Placerville Inn, located at 6850 Greenleaf Drive, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14146 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1257–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, ER00–3001–001]

Hermiston Power Partnership; Notice of Issuance of Order

May 30, 2002.

Hermiston Power Partnership (Hermiston) submitted for filing an initial rate schedule that provides for wholesale sales of electric energy, capacity replacement services, and certain ancillary services at market-based rates, and for the reassignment and resale of transmission rights. Hermiston also requested waiver of various Commission regulations. In particular, Hermiston requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Hermiston.

On May 3, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-West, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Hermiston should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Hermiston is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Hermiston, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Hermiston's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14145 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–130–000]

Los Esteros Critical Energy Facility, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 31, 2002.

Take notice that on May 2, 2002, Los Esteros Critical Energy Facility, LLC (Los Esteros) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Los Esteros, a Delaware limited liability company, proposes to own and operate a nominally rated 180 MW natural gas-fired, simple cycle electric generating facility to be located in Santa Clara County, California. Los Esteros intends to sell the output at wholesale to an affiliated marketer.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14178 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1884–000]

Power Development Company, L.L.C.; Notice of Filing

May 31, 2002.

Take notice that on May 28, 2002, Power Development Company, L.L.C. (PDC), an electric power developer organized under the laws of Delaware, petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of its market-based rate schedule, waiver of certain requirements under subparts B and C of part 35 of the Commission's regulations, and preapproval of transactions under part 34 of the regulations. PDC seeks expedited treatment of this petition to facilitate its response to ISO New England, Inc.''s (ISO–NE) request for emergency capability in Southwest Connecticut, and requests that the Commission accept PDC's schedule with an effective date of May 29, 2002.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14182 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–132–000]

PPL Edgewood Energy, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 31, 2002.

Take notice that on May 6, 2002, PPL Edgewood Energy, LLC (Applicant) 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.

The Applicant is a Delaware limited liability company formed for the purpose of owning and operating the Edgewood generating plant, located in Brentwood, New York, which will generate up to 79.9 MW. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14180 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–133–000]

PPL Shoreham Energy, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 31, 2002.

Take notice that on May 6, 2002, PPL Shoreham Energy, LLC (Applicant), 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.

The Applicant is a Delaware limited liability company formed for the purpose of owning the Shoreham generating plant, located in Shoreham, New York. The Applicant is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14181 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–129–000]

Rock Springs Generation, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 31, 2002.

Take notice that on May 2, 2002, Rock Springs Generation, L.L.C. (Rock Springs) 4201 Dominion Boulevard, P.O. Box 2310, Glen Allen, Virginia, 23060, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The Applicant is a corporation organized under the laws of the Commonwealth of Virginia that is engaged directly and exclusively in developing, owning, and operating a gas-fired, 930 MW electric generating facility in Rock Springs, Maryland. The applicant's power plant will be an eligible facility.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 7, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14177 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–476–004]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

May 31, 2002.

Take notice that on May 13, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Southern states that the filing is being made in compliance with the Commission's Order on Southern's Order No. 637 Settlement dated April 11, 2002, to become effective July 1, 2002. Those sheets that remain designated as pro forma sheets will require additional programming and testing time such that the system will not be in place to accommodate those enhancements until December 1, 2002. Southern will plan to make a filing to place those sheets into effect based on the terms of the order it receives herein.

On April 11, 2002, the Commission issued an order on Southern's July 2, 2001 Settlement proposal to comply with the terms of Order No. 637. Such order modified the terms of the Settlement such that the parties withdrew from the Settlement and the Settlement dissolved under its own terms. Based on the terms of the Order, Southern submits the following tariff revisions to comply with the terms of the Order: (1) Implementation of the capacity release timetables for biddable and nonbiddable releases consistent with Version 1.5 of the NAESB Standards; (2) changes to the segmentation in reticulated areas; (3) implementation of expanded flexible receipt point rights for capacity release transactions; (4) addition of a within the path priority for Exhibit A–1 receipt point nominations and implementation of within the path Exhibit B–1 delivery point priorities; (5) implementation of procedures to approve shifting a discount to an alternate receipt or delivery point where that discount has been contracted for on a point specific basis; (6) implementation of revised OFO procedures as approved in the Order; and (7) implementation of a process to allow shippers to use a third party's storage to reconcile imbalance and enhanced use of ISS and storage transfers into and from storage accounts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14185 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2031–046]

Springville City, Utah; Summary of Teleconference

May 31, 2002.

a. Date and time of Teleconference: Thursday, May 23, 2002, 2:00 PM EDT.

b. FERC Contact: Jim Haimes, project coordinator, at 202–219–2780 or at james.haimes@ferc.gov.

c. Participants: Representatives of the Office of Energy Projects (OEP) who included Edward Abrams, Sean Murphy, Charlene Scott, and Jim Haimes; Matthew Cassel and Jaime Tsandes of Psomas, environmental consultant for the City of Springville, Utah, licensee; and John Logan and Garish Willis, representatives of the Forest Service (FS).

d. Agenda: (1) Introduction; (2) Introduction of Participants; (3) Discussion of Issuance of the Commission's Environmental Assessment (EA) for the relicensing of the Bartholomew Hydroelectric Project (project); (4) Commission Staff's EA Recommendation to Eliminate Preliminary 4(e) Conditions 17, 20, and 21 Submitted by the FS; (4) Scheduling of Final 4(e) Conditions; and (5) Follow-up Actions.

e. Discussion: (1) FS representatives expressed concern that the Commission's EA issued on May 13, 2002, for the relicensing of the project was not a draft EA but rather a final EA. Prior to issuance of this document, the FS expected to have considerably more time than 45 days, the public comment period indicated in the EA, to complete its NEPA and administrative responsibilities necessitated to formulate and obtain a Finding Of No Significant Impact conclusion for its list of final 4(e) conditions.

OEP representatives explained that the Commission's policy regarding EAs has changed; whenever a project relicensing involves minimal conflicts and disputes, Commission staff will issue only one EA rather than draft and final documents. In fact, footnote 5 of the Scoping Document (SD) issued on March 30, 2001, for the subject relicensing indicated as follows:

If there are relatively few comments and recommendations filed in response to this scoping document and our public notice indicating that the subject application is ready for environmental analysis, staff will consolidate the environmental review process by excluding the Draft EA and issuing an EA that provides 45 days for public comment. Any comments filed on the EA would then be considered in the Commission order approving or denying a new license for the Bartholomew Project.

(2) Staff's EA concluded that the FS did not provide adequate support for its:

(1) Condition 17, requiring the City to install continuous recording flow gages and a bypass system at each of its spring collection boxes on FS land; (2) Condition 20, requiring the City to develop a plan to protect federally listed and sensitive plant and wildlife species on FS lands; and (3) Condition 21, requiring the City to develop an avian collision and electrocution hazards plan. Therefore, staff recommends in the EA that the FS exclude these conditions from its list of final 4(e) conditions.

After discussing each of the aforementioned items, the following conclusions and decisions were reached.

(i) Because of a misunderstanding regarding data on flows that are available for diversion to the Upper Bartholomew Powerhouse, the FS originally concluded that the licensee was diverting more than the 10 cubic feet per second (cfs) permitted by the City's existing water rights. The FS now understands that diverted flows do not exceed 10 cfs; therefore, its Condition 17 probably is not needed.

(ii) The FS does not want the licensee to conduct further studies and analysis now regarding the impacts of project operation and maintenance on existing federally listed and FS sensitive species that may be located on project lands within the Uinta National Forest. Instead, the FS wants the Commission to retain the authority to require the licensee to conduct future surveys and analysis for any newly listed or additional FS sensitive species that potentially could be located near project facilities on FS land. Therefore, the FS intends to modify its Condition 20 accordingly.

(iii) Commission staff concludes that, because all portions of project-related electric lines on FS lands are underground, there is inadequate support to include Condition 21, which would require the licensee to develop a plan to protect avians against electrocution and collision with the project's power lines. FS representatives agreed that existing data provided by the licensee indicate that all project-related power lines on FS lands do not pose a hazard to avians.

Nevertheless, FS representatives still are of the opinion that small portions of existing non-project, above ground electric lines operated by the City may cross FS lands. Based on available information, the FS representatives agreed to eliminate Condition 21 from the list of 4(e) conditions. However, they retain the right to require the licensee to conduct additional surveys pursuant to the new FS Special Use Permit to be issued for the project.

f. Follow-up Actions: Psomas will supply the FS with a detailed analysis of the capacity of Springville City's water collection system, which would allow the FS to drop its gaging request. FS representatives stated that they would like to revise this condition to require the City to continue to operate and maintain wildlife watering troughs in the upper portions of the project. Sean Murphy, the OEP biologist assigned to the subject project, will assist John Logan of the FS in drafting appropriate revised language for FS Condition 20.

The meeting participants agreed that the currently required FS conditions would be less costly and more effective if the revisions agreed upon at the teleconference were included in the list of final conditions filed by the FS. FS representatives expressed concern that, under its current policy, the Commission could issue an order providing the City with a new license for the project before the FS provides its list of final 4(e) conditions. OEP representatives discussed the possibility of the FS providing its final 4(e) conditions in an expeditious manner; FS representatives, however, responded that the FS would be unable to provide its final conditions before September 19, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14184 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–006, RP00–553–009, and RP00–481–006.]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Plan

May 30, 2002

Take notice that on April 29, 2002, in compliance with the Commission's order issued March 29, 2002 in the referenced dockets, Transcontinental Gas Pipe Line Corporation (Transco) submits this filing to explain how it will comply with the requirements of Order Nos. 637 and 587 before the start of the 2002–03 winter heating season regardless of whether its 1Line business system is operational.

Transco indicates that the 1Line business system is on schedule for a April 1, 2003 implementation date and at that time it will be able to comply with Order Nos. 637 and 587. Transco outlines numerous delays in implementing 1Line and indicates that it cannot modify its existing business systems to comply with Order Nos. 637

and 587. Further, Transco contends that it cannot manually comply with Order Nos. 637 and 587. Transco contends that to address customer concerns regarding the trading fee for netting and trading, it proposes in the interim, to assess a trading fee based on the FT commodity rate, rather than the originally proposed IT rate. Transco included *pro forma* tariff sheets in its filing setting forth the interim trading fee. Transco proposes to file and move into effect these tariff sheets and the other 1line related tariff sheets filed in this proveeding for an April 1, 2003 implementation of 1Line. Transco also provided a proposed schedule identifying, among other things, the dates by which customer training and customer issues will be addressed under an April 1, 2003 implementation date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed must be filed on or before June 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14149 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–487–001, and RP01–14–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

May 31, 2002.

Take notice that on May 13, 2002, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheet listed on Appendix A to the filing.

Tuscarora states that the purpose of this filing is to comply with the Commission's April 12, 2002 order on Tuscarora's Order No. 637 Compliance Filing.

Tuscarora states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before June 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14186 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1885–000]

Waterside Power, LLC; Notice of Filing

May 31, 2002.

Take notice that on May 28, 2002, Waterside Power, LLC (Waterside), an electric power developer organized under the laws of Delaware, petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of its market-based rate tariff, waiver of certain requirements under subparts B and C of part 35 of the Commission's regulations, and preapproval of transactions under part 34 of the regulations. Waterside is developing a 69.25 MW (net) gas turbine electric generating facility in Stamford, Connecticut.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14183 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–341–000]

Western Gas Interstate Company; Notice of Compliance Filing

May 31, 2002.

Take notice that on May 21, 2002, Western Gas Interstate Company (WGI), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 146, Superseding Original Sheet No. 146, in compliance with Order No. 587–N. The

revised tariff sheet would permit releasing shippers, as a condition of a capacity release, to recall released capacity and to renominate such recalled capacity at each nomination opportunity. The tariff sheet is proposed to be effective July 1, 2002.

WGI states that copies of this filing were served on its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14187 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

May 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Change in Project Land Rights and Non-Project Use of Project Lands.

b. *Project No.*: 1354–031.

c. *Date Filed*: March 27, 2002.

d. *Applicant*: Pacific Gas and Electric Company.

e. *Name of Project*: Crane Valley Project.

f. *Location*: The project is located on Willow Creek and its tributaries in Madera and Fresno Counties, California. Parts of the project are within the Sierra National Forest on lands the Forest Service manages.

g. *Filed Pursuant to*: Federal Power Act 16 USC 791(a)-825(r).

h. *Applicant Contact*: Nicholas J. Markevich, Pacific Gas and Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact*: Steve Naugle, *steven.naugle@ferc.gov*, 202–219–2805.

j. *Deadline for filing comments and or motions*: July 1, 2002.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. Please reference the following number, P–1354–031, on any comments or motions filed.

k. *Description of the Application*: The applicant requests Commission approval to lease certain Crane Valley Project lands to The Pines Resort (lessee) for the proposed expansion of an existing marina on Bass Lake, the project reservoir. Specifically, the lessee proposes to: (1) Relocate and modify various existing marina facilities, including a boat launch ramp, boat docks and slips, and a fuel dock; (2) add new facilities, including additional docks and slips, two observation decks, a seawall and rip rap, and a beach area; and (3) remove accumulated sediments within the footprint for the expanded marina. The marina currently has four docks with approximately 140 boat slips. After completing the proposed improvements, the marina would consist of seven docks with approximately 180 boat slips. The expanded docking facilities would be used by patrons of The Pines Resort.

l. *Locations of the Application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14147 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 31, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt

of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP98–150–000	5–21–02	Senator Hillary Rodham, Clinton.
2. Project No. 2342–013	5–28–02	Frank Winchell/Pat Weslowski.
3. Project No. 1354–000 and	5–31–02	Glenn Caruso.

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–14189 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–4–000]

Rate Ceiling for Capacity Release Transactions; Notice of Staff Paper

May 30, 2002.

Take notice that the Commission's Staff is posting a Staff Paper presenting data on capacity release transactions relating to the experimental period when the rate ceiling on released capacity was waived. The purpose of this paper is to stimulate comment that can guide the development of policies relating to this issue. This paper, as well as additional information and a spreadsheet will be posted on the Commission's Web site at *http://www.ferc.fed.us/gas/gas.htm.*

Comments on this paper should be filed within 30 days of the issuance of the instant notice. Comments may be filed electronically or in paper format. For electronic filings via the Internet, *see* 18 CFR 385.2001(a)(1)(iii) (2001) and the instructions on the Commission's Web site under the ''e-Filing'' link. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.gov*.

Questions regarding this Notice should be directed to:

Robert McLean, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 202–208–1179. *Robert.Mclean@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–14148 Filed 6–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7225–1]

EPA Science Advisory Board, Metals Assessment Panel; Request for Nominations

ACTION: Notice; request for nominations to serve on the Metals Assessment Panel of the Environmental Protection Agency's Science Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency's (Agency, EPA) Science Advisory Board (SAB) is re-announcing the formation of a Metals Assessment Panel and its solicitation of nominations of qualified individuals to serve on this Panel. An earlier solicitation of nominations for qualified individuals was published April 3, 2002 in the **Federal Register** (67 FR 15802).

The SAB provides independent scientific and technical advice to the EPA Administrator on Agency positions; in this case, the SAB will advise on a Metals Action Plan that the Agency will use to guide the development of a Framework and Guidance for assessing hazards and risks posed by metals and metal compounds. Those selected to serve on the SAB's Metals Assessment Panel will review the Action Plan this summer. The same Panel is also likely to review the Framework and Guidance Documents in 2003.

The approved policy under which the EPA Science Advisory Board selects review panels is described in a recent SAB Commentary [*EPA Science Advisory Board (SAB) Panel Formation*

Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary (EPA–SAB–EC–COM–002–003), which can be found on the SAB website (*http://www.epa.gov/sab*) at *http://www.epa.gov/sab/ecm02003.pdf.*]

Because the Agency plans to make a draft of the review document available for public comment in early June (via separate FR Notice), we are taking advantage of this opportunity for further public input on our panel development process. The overlapping nomination period and public availability of the draft document should inform the public and help them understand the issues to be addressed as they suggest potential candidates for the Metals Assessment Panel. As a result, the SAB is re-opening the nomination process for fifteen calendar days. However, we do not intend to delay the nomination process beyond that stated in this notice, even if the public release of the review document is delayed.

If any individual or organization requires additional time to submit a nomination, a short extension may be granted by the SAB Staff, at their discretion. However, it will not delay the nomination process beyond the time stated in this notice plus two days. The extra days will be granted to any individual or organization needing an additional day or two provided that they contact the SAB staff within ten calendar days of this announcement to request that extension.

Any interested person or organization may nominate qualified individuals for membership on the Panel. Persons and organizations who nominated individuals in response to the solicitation published April 3, 2002 in the **Federal Register** (67 FR 15802) do not need to renew their nomination, however, nominators should confirm that their nomination has been received by the SAB Staff. Staff contact information is provided below.

Nominations (preferably in electronic format) must include the individual's name, occupation, position, qualifications to address the issue, and contact information (i.e., telephone number, fax number, mailing address, email, and/or Website). To be considered, all nominations must include a current bio, CV or resume (preferably electronic in MSWord or WordPerfect) providing information on the nominee's background, experience, and qualifications for this Panel.

The SAB staff asks that nominations be provided in the following way:

(1) Send the nomination by email to: *lubarov-walton.zisa@epa.gov*.

(2) Use one email per person being nominated.

(3) Please use ''Metals Nomination'' in the subject field, followed by the last name of the candidate you are nominating. (For example, ''Metals Nomination: Smith).

(4) Attach supporting information in MS Word or WordPerfect files ending in ''.doc'' or ''.wpd''.

(5) In a separate file from the bio, CV or resume, please provide the following information in the order shown:

For the Nominating Individual

First Name:
Last Name:
Email Address:
Organization Title:
Mailing Address:
Work Phone:
Work Fax:

For the Candidate Being Nominated

First Name:
Last Name:
Professional Title:
Department:
School or Unit:
University or Organization:
Mailing Address:
Work Phone:
Fax Work Phone:
Email Address:
Website for CV (if one exists):

Nominator's Assessment of Expertise: The following areas of expertise will be useful in this review. Please indicate the areas of expertise the candidate could contribute:

1. Toxicology of metals in humans.
2. Toxicology of metals in the environment, especially expertise in aquatic and terrestrial environments.
3. Behavior, transport and fate of metals in the environment.
4. Risk assessment of metals.
5. Risk assessment frameworks, whether of metals or other stressors.
6. Technical issues arising in efforts to reduce the risks of metals in regulatory or non-regulatory programs.
7. Expertise on individual metals—please identify which metals.

Background: There has been considerable interest in the scientific assessments that the Agency conducts on metals and metal compounds. Discussions between the Agency and external stakeholders, as well as concerns expressed formally as part of the Toxics Release Inventory (TRI) lead rulemaking, have demonstrated the need for a more comprehensive, cross-Agency approach to metals assessments that can be applied to human health and ecological assessments. Therefore, the Agency is developing a Framework and Guidance for EPA programs to use when considering the various environmental properties of metals, such as persistence, bioaccumulation and toxicity, in assessing the hazards and risks of metals and metal compounds. As a first step in accomplishing this goal, the Agency is developing an Action Plan that

(a) Identifies the primary elements to be addressed in the assessment Framework and Guidance,

(b) Proposes a structure for the Framework and Guidance, and

(c) Sets out a process that will culminate in the production of the Framework and Guidance, per se.

Charge to the Panel: Details of the Charge may change as a result of discussions between the Agency and the Panel. Updates will be posted on the SAB Website: (*www.epa.gov/sab*). The current draft charge is:

1. Please comment on the soundness of the proposed organizing principles suggested by the public that are reflected in the draft Action Plan for the ''Framework for Metals Assessment and Cross-Agency Guidance for Assessing Metals-Related Hazard and Risk.'' (The proposed organizing principles, listed in section 1 of the draft Action Plan, include the following: providing a basis for identifying and prioritizing among metals, metal alloys and other metal compounds with respect to hazard and risk, use of sound science, use of a tiered approach, recognition of the influence of bioavailability on toxicity, and initially focus on hazard assessment as a screening tool.)

2. Are the issues raised in the Action Plan—chemical speciation, bioavailability, bioaccumulation, persistence, and toxicity—the major issues of concern for improving EPA's scientific assessments of the hazards and risks of metals?

3. Has EPA adequately characterized the issues and do the summaries adequately capture the key scientific uncertainties that will need to be addressed by the Framework and the Guidance.

4. Can the SAB suggest priorities within the list of issues based on (a) the potential impact on the assessment of risk or hazard and (b) the state-of-the-science and the feasibility of developing guidance in the near term?

5. Are there specific recommendations for the Framework or for the ''Guidance for Characterization and Ranking of Metals'' (including methods and models) for addressing these issues that are not captured by EPA's Action Plan?

6. Please comment on the feasibility of the proposed process for drafting the Framework and the Guidance. Will the

timeline allow for the scientific issues to be adequately addressed. Are the measures being taken to involve the scientific community and the public adequate?

7. Please comment on the outline for the Framework and the description of the Guidance. Is it clear and all-inclusive?

8. Are there any additional actions, beyond those proposed in the Action Plan that could improve EPA's scientific assessments of the hazard and risks of metals?

FOR FURTHER INFORMATION CONTACT: Nominations in electronic format should be submitted to *lubarov-walton.zisa@epa.gov.* Anyone unable to submit in electronic format should send the nomination paperwork to Ms. Zisa Lubarov-Walton, Management Assistant, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–4537; FAX (202) 501–0323. Nominations should arrive no later than June 21, 2002, unless arrangements for a one or two day extension have been made by June 17, 2002, with Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–4559; FAX (202) 501–0323, email: *white.kathleen@epa.gov.* The SAB will not necessarily formally acknowledge or respond to nominations.

The nominations received through this solicitation will be combined with nominations obtained through the previous nomination solicitation (67 FR 15802; April 3, 2002) and other sources; e.g., the Agency, SAB members, and external outreach. From this larger group of nominees (termed the ''WIDECAST''), a smaller subset (the ''Short List'') will be identified for more detailed consideration. The Short List will include the names of candidates, a short biosketch of each candidate, and the names of those who nominated them. The Short List will be posted on the SAB Website (*http://www.epa.gov/sab/fiscal02.htm*) and public comments accepted on the expertise, conflict-of-interest, and apparent lack of impartiality (as defined by federal regulation) of individual candidates as well as on the overall balance of views represented on the Panel. At the SAB, a balanced panel is characterized by inclusion of the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors can be influenced by work history and affiliation), and the collective breadth of experience to address the charge adequately.

Public reaction to the Short List candidates will be considered in the selection of the Panel, along with information provided by candidates and information gathered by SAB Staff independently on the background of each candidate. Criteria to be used in evaluating an individual panelist include: (a) Expertise, knowledge, and experience (primary factors); (b) Availability and willingness to serve; (c) Scientific credibility and impartiality; and (d) Skills working in committees and advisory panels.

Panel members will be asked to attend at least one public face-to-face meeting and, probably, several public conference call meetings over the anticipated 3-month course of the activity. The Executive Committee (EC) of the SAB will review the Panel's report in a public meeting and reach a judgment about its transmittal to the Administrator.

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 *EPA Science Advisory Board FY2001 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256, or at *http://www.epa.gov/sab/annreport01.pdf.*

Dated: May 31, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–14043 Filed 6–5–02; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Information Quality Guidelines and Request for Comments

AGENCY: Office of National Drug Control Policy.

ACTION: Proposed information quality guidelines; request for comments.

SUMMARY: The Office of Management and Budget (OMB) has directed that federal agencies make available on their websites guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies, as well as administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines. The Office of Drug Control Policy (ONDCP) now seeks public comments on the following draft guidelines covering pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by ONDCP.

DATES: Submit comments on or before July 24, 2002.

ADDRESSES: Address comments concerning these proposed guidelines to Dr. Terry S. Zobeck of the Office of Planning and Budget, Office of National Drug Control Policy (ONDCP), 750 17th Street, NW, 7th Floor, Washington, DC 20503. Facsimile: 202–385–6729.

Submit electronic comments to *tzobeck@ondcp.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Terry S. Zobeck, 202–395–6736.

For the reasons discussed in the summary, the Office of National Drug Policy proposes to issue these guidelines pursuant Section 515 of the Paperwork Reduction Act (44 U.S.C. 3502(1) *et seq.*).

Office of National Drug Control Policy Information Quality Guidelines

The authority for issuing these guidelines is: 44 U.S.C. 3502(1) *et seq.:* OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 66 FR No. 189 at 49728, updated in 67 FR 369, and corrected in 67 FR 8452.

Section 1. Procedures for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Prior to Dissemination.

(a) Objectivity and Utility of Information

(b) Integrity of Information

Section 2. Requests for Correction of Information Publicly Disseminated by the Office of Management and Budget.

Section 3. Procedures for Requesting Reconsideration.

Section 4. Definitions.

Dated: May 29, 2002.

Linda V. Priebe,

Assistant General Counsel.

Information Quality Guidelines

The Office of National Drug Control Policy (ONDCP) publishes these guidelines in accordance with the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (Agency-wide Guidelines) published by Office of Management and Budget (OMB) in the **Federal Register** in 66 FR No. 189 at 49718 on Friday, September

28, 2001, updated in 67 FR 369 on Thursday, January 3, 2002 and corrected in 67 FR 8452 on February 22, 2002. These published guidelines were issued pursuant to Section 515 of the Paperwork Reduction Act (44 U.S.C. 3502(1) *et seq.*). In response to the legislation and the published guidelines, ONDCP identifies the following policies and procedures for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by OMB; and it hereby establishes additional procedures for affected persons to seek and obtain correction of information maintained and disseminated by ONDCP that does not comply with standards set out in the Agency-wide Guidelines.

Section I. Procedures for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Prior to Dissemination

In Agency-wide Guidelines, *quality* is defined as an encompassing term comprising utility, objectivity, and integrity.

(a) Objectivity and Utility of Information

(1) As defined in Section IV, below, *objectivity* is a measure of whether disseminated information is accurate, clear, complete, and unbiased; *utility* refers to the usefulness of the information to its intended audience. ONDCP is committed to disseminating reliable and useful information. Before disseminating information, ONDCP staff and officials should subject such draft information to an extensive review process. It is the primary responsibility of the particular ONDCP Office (hereafter referred to as ''Lead Component'') drafting information intended for dissemination to pursue the most knowledgeable and reliable sources reasonably available to confirm the objectivity and utility of such information.

(2) Much of the information ONDCP disseminates consists of or is based on information submitted to ONDCP by other federal government agencies. ONDCP expects that agencies will subject information submitted to ONDCP to adequate quality control measures. In drafting the material to be disseminated, the Lead Component should review and verify the data submitted by the agencies, as necessary and appropriate. ONDCP also originates information based on research, assessments, and other efforts supporting drug policy development. The Lead Component should review and verify the data, as necessary and appropriate. Underlying information upon which the disseminated material is based may be subject to these guidelines only if that information is published by ONDCP. Being subject to these guidelines does not necessarily mean that the material published by ONDCP is a policy statement of the U.S. government. ONDCP contracts with organizations to conduct research in support of drug policy, but their results are not influenced by ONDCP policy. Each Component that disseminates information should maintain verification files of materials that it originates.

(3) In seeking to assure the objectivity and utility of the information it disseminates, ONDCP should generally follow a basic clearance process coordinated by the Lead Component drafting information intended for dissemination. The quality control process places responsibility for action upon the Lead Component. The Lead Component is encouraged to consult with all Components throughout ONDCP having substantial interest or expertise in the material proposed to be disseminated. Where appropriate, substantive input also should be sought from other offices within the Executive Office of the President (EOP), other government agencies, non-government organizations, and the public.

(4) The Lead Component should consider the uses of the information from both the perspective of ONDCP and the public. When it is determined that the transparency of information is relevant for assessing the information's usefulness from the public's perspective, the Lead Component should ensure that transparency is appropriately addressed.

(5) When the Lead Component determines that the information it will disseminate is influential scientific, financial, or statistical information, extra care should be taken to include a high degree of transparency about data and methods to meet the Agency-wide Guidelines' requirement for the reproducibility of such information. In this context, a high degree of transparency for published information means that the methodology used to derive the results is readily understandable to persons experienced in the appropriate field of study. In determining the appropriate level of transparency, the Lead Component should consider the types of data that can practicably be subjected to a reproducibility requirement given ethical, feasibility, and confidentiality constraints. In making this determination, the Lead Component should hold analytical results to an even higher standard than original data.

(6) The Component responsible for the dissemination of information should generally take the following basic steps to assure the *objectivity* and *utility* of the information to be disseminated:

(a) Prepare a draft of the document after consulting the necessary parties, including government and non-government sources, as appropriate;

(b) Determine necessary clearance points;

(c) Determine where the final decision shall be made;

(d) Determine whether peer review would be appropriate and, if necessary, coordinating such review;

(a) Obtain clearances; and

(f) Resolve issues related to information ''objectivity'' and ''utility'' and, if necessary, presenting the matter to higher authority.

(7) Hard-copy public dissemination of information and all information published on ONDCP's website <*www.WhiteHouseDrugPolicy.gov*> shall occur only after clearances are obtained from all appropriate Components and, as appropriate, the Office of the Chief-of-Staff.

(8) The quality control procedures followed by ONDCP should vary with the nature of the information and the manner of its distribution.

(9) These guidelines focus on procedures for the *dissemination* of *information*, as those terms are defined herein. Accordingly, procedures specifically applicable to forms of communication outside the scope of these guidelines, such as those for correspondence or press releases, among others, are not included.

Conclusion: ONDCP will maximize the quality of the information it disseminates, in terms of objectivity and utility, first by looking for input from a range of sources and perspectives, to the extent practicable under the circumstances, and second by subjecting draft materials to a review process involving as many Components and offices as may be in a position to offer constructive input, as well as other offices within the Executive Office of the President (EOP) and other government agencies.

(b) Integrity of Information

(1) *Integrity* refers to the security of information—protection of the information from unauthorized, unanticipated, or unintentional modification—to prevent information from being compromised through corruption or falsification.

(2) Within the Executive Office of the President (EOP), the Office of Administration has substantial responsibility for ensuring the *integrity*

of information as defined in these guidelines. ONDCP also has a Management and Administration Office that coordinates and works with the EOP Office of Administration to ensure the integrity of information. These offices implement and maintain new computer software and hardware systems and provide operational support for systems and system users.

(3) Computer security is the responsibility of the EOP Office of Administration's Chief Information Officer, Information Assurance Directorate. This Office oversees all matters relating to information integrity, including the design and implementation of the security architecture for the EOP, periodic audits of security architecture components, and review and approval of changes to the technical baseline. Per law and ONDCP policy, EOP's information technology (IT) security policy, procedures, and controls are risk-based, cost-effective, and incorporated into the lifecycle planning of every IT investment. Additionally, the Office: assesses risks to its systems and implements appropriate security controls; reviews annually the security of its systems; and develops plans to remediate all security weaknesses found in independent evaluations and other security audits and reviews.

(4) As an agency under the EOP, ONDCP is an integral part of the overall EOP network, and is an active participant in all aspects of information integrity at EOP. ONDCP adheres to both law and ONDCP IT security policies, along with EOP security policies and operational processes for the protection of ONDCP's data and information. This includes ensuring that controls to protect the security of information (and the integrity of information) are risk-based, cost-effective, and incorporated into the life-cycle planning of every IT investment. ONDCP's systems are reviewed annually in accordance with existing law and policy and corrective action plans are developed to address all security weaknesses, such as integrity issues.

Section II. Requests for Correction of Information Publicly Disseminated by the Office of Management and Budget

ONDCP works continuously to be responsive to users of its information and to ensure quality. In furtherance of these objectives, when ONDCP receives any information from the public that raises questions about the quality of the information it has disseminated, ONDCP duly considers corrective action.

(a) Persons seeking to correct information affecting them that was publicly disseminated by ONDCP may submit such requests to the ONDCP Chief-of-Staff, at Executive Office of the President, Office of National Drug Control Policy, Washington, DC 20503. Persons should address requests to ''ONDCP Chief-of-Staff'' and clearly indicate that the communication is a ''Request for Correction'' under Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001. Persons should specify the information that is being contested, why the information is being contested, the specific aspect of the information that needs to be corrected, an explanation of how they are affected by the information, how the information identified does not comply with ONDCP guidelines, and what corrective action is sought. Persons should provide all supporting documentation necessary for ONDCP to resolve the complaint.

(b) If the information disseminated by ONDCP and contested by an affected person was previously disseminated by another Federal agency in virtually identical form, then the complaint should be directed to the originating agency.

(c) Requests will be received by the ONDCP Chief-of-Staff. Typically, requests raising substantive issues will be forwarded to the Component within ONDCP responsible for the subject area.

(d) These guidelines apply only to requests submitted as outlined in Section II, paragraph (a) above. These guidelines will not be applied to any other form of request and also may not be applied to a request submitted consistent with the procedures outlined above, if ONDCP determines:

(1) It is not submitted by an affected person for the correction of publicly disseminated information of the Office of National Drug Control Policy, as those terms are defined in these guidelines, or

(2) The information identified in Section II, paragraph (a) above has not been provided in full. All requests submitted as outlined in Section II, paragraph (a) that are not excluded under the criteria identified in (1) or (2) of this section, will be considered ''covered requests'' and will be processed under these guidelines.

(e) If ONDCP determines that a request is not covered by these guidelines, it will so advise the requester within 60 days, unless there is a reasoned basis for an extension. If a request is deemed frivolous, no response will be made.

(f) For covered requests, the Component reviewing the request will give the request due consideration, including a review of the disseminated information at issue and other materials, as appropriate. Where the reviewing Component or office determines that the information publicly disseminated by ONDCP warrants correction, it should consider appropriate corrective measures recognizing the potential implications for ONDCP and the United States.

(g) When considering covered requests to determine whether a corrective action is appropriate, the reviewing Component may consider the factors in Section 2, paragraph (d) in addition to the following factors:

(1) The significance of the information involved, and

(2) The nature and extent of the request and the public benefit of making the requested correction.

(h) If ONDCP determines that a request is covered by these guidelines, but that corrective action is unnecessary or is otherwise inappropriate, ONDCP will notify the requestor of its determination within 60 days, unless there is a reasoned basis for an extension.

(i) If ONDCP determines that a request is covered by these guidelines and that corrective action is appropriate, it will notify the requestor of its determination and what action has been or will be taken within 60 days, unless there is a reasoned basis for an extension. Subject to applicable law, rules and regulations, corrective measures may be taken through a number of forms, including (but not limited to): Personal contacts via letter or telephone, form letters, press releases or postings on the ONDCP Web site, <*www.WhiteHouseDrugPolicy.gov*>, to correct a widely disseminated error or address a frequently raised request. Corrective measures, where appropriate, should be designed to provide reasonable notice to affected persons of such correction.

Section III. Procedures for Requesting Reconsideration

(a) The following procedures are available to an affected person who has filed a covered request for correction of public information in accordance with Section II, above; who received notice from the ONDCP Chief-of-Staff of ONDCP's determination; and who believes that the ONDCP did not take appropriate corrective action. Requests determined by ONDCP to be not covered by the guidelines and requests determined to be frivolous will not be reconsidered under these provisions. These procedures apply to information

disseminated by ONDCP on or after October 1, 2002.

(b) To request reconsideration, persons should clearly indicate that the communication is a Request for Reconsideration; should reference Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001; and should include a copy of the request for correction previously submitted to ONDCP and ONDCP's response. Resubmission should be made to the ONDCP Chief-of-Staff by mail using the contact information in Section II, paragraph (a), above. Requests for Reconsideration must be submitted within thirty (30) days of the date of ONDCP's notification to the requester of the disposition of the underlying request for correction.

(c) ONDCP's Chief-of-Staff will consider the request for reconsideration applying the standards and procedures set out in Section II, and will make a determination regarding the request. In most cases, the requestor will be notified of the determination and, if appropriate, the corrective action to be taken, within 60 days. ONDCP will give reasonable notice to affected persons of any corrections made.

Section IV. Definitions

(a) *Affected* persons are those who may benefit or be harmed by the disseminated information. This includes both: (1) Persons seeking to address information about themselves or about other persons to whom they are related or associated; and (2) persons who use the information.

(b) *Dissemination* means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) ''Conduct or Sponsor''). Dissemination does not include distributions of information or other materials that are:

(1) Intended for government employees or agency contractors or grantees;

(2) Intended for U.S. Government agencies;

(3) Produced in responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar law;

(4) Correspondence or other communication limited to individuals or to other persons, within the meaning of paragraph 7, below; or

(5) Communications such as press releases, interviews, speeches, and similar statements.

Also excluded from the definition are archival records; public filings; responses to subpoena or compulsory document productions; or documents prepared and released in the context of adjudicative processes. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

(c) *Influential,* when used in the phrase ''influential scientific, financial, or statistical information,'' refers to disseminated information that ONDCP determines will have a clear and substantial impact on important public policies or important private sector decisions.

(d) *Information,* for purposes of these guidelines, including the administrative mechanism described in Sections II and III, above, means any communication or representation of facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

(1) Opinions or policy, where the presentation makes clear that the statements are subjective opinions, rather than facts. Underlying information upon which the opinion or policy is based may be subject to these guidelines only if that information is published by ONDCP;

(2) Information originated by, and attributed to, non-ONDCP sources, provided ONDCP does not expressly rely upon it. Examples include: non-U.S. government information reported and duly attributed in materials prepared and disseminated by ONDCP; hyperlinks on ONDCP's website to information that others disseminate; and reports of advisory committees published on ONDCP's website;

(3) Statements related solely to the internal personnel rules and practices of ONDCP and other materials produced for ONDCP employees, contractors, or agents;

(4) Descriptions of the agency, its responsibilities and its organizational components;

(5) Statements, the modification of which might cause harm to the national security, including harm to the national defense or foreign relations of the United States;

(6) Statements of Administration policy; however, any underlying information published by ONDCP upon which a statement is based may be subject to these guidelines;

(7) Testimony or comments of ONDCP officials before courts, administrative bodies, Congress, or the media;

(8) Investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States; or

(9) Statements which are, or which reasonably may be expected to become, the subject of litigation, whether before a U.S. or foreign court or in an international arbitral or other dispute resolution proceeding.

(e) *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to prevent the information from being compromised through corruption or falsification.

(f) *Objectivity* addresses whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including background information where warranted by the circumstances.

(g) *Person* means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision, or an international organization;

(h) *Quality* is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer these four statutory terms, collectively, as *quality.*

(i) *Utility* refers to the usefulness of the information to its intended users, including the public.

[FR Doc. 02–14013 Filed 6–5–02; 8:45 am]

BILLING CODE 3180–02–P

EXPORT-IMPORT BANK

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35), the Export-Import Bank of the United States is submitting to the Office of Management and Budget (OMB) a request to review and approve both an extension and revision to several insurance forms which will expire on May 31, 2002. The Export-Import Bank of the United States (Ex-Im Bank) provides a variety of export credit insurance policies to exporters and institutions financing exports. The forms covering these policies are the applications for insurance which incorporate questionnaires and certificates. They provide information which allows the Bank to obtain

legislatively required reasonable assurance of repayment and they fulfill other statutory requirements. The Bank is requesting a three-year extension for all of the forms. A request for public comment on this collection was published in the **Federal Register**, Volume 67, No. 55, Thursday, March 21, 2002. No comments were received.

DATES: Written comments should be received on or before July 8, 2002.

ADDRESSES: Direct all written comments or requests for additional information to David Rostker, Office of Management and Budget, Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, (202) 395–3897.

FOR FURTHER INFORMATION CONTACT: Carlista D. Robinson, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3351.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers:

1. Application for Quotation—Export Credit Insurance, EIB 92–34
2. Beneficiary Certificate and Agreement, EIB 92–37
3. Application for a Financial Institution Buyer Credit Policy, EIB 92–41
4. Application for Export Credit Insurance Financing or Operating Lease Coverage, EIB 92–45
5. Application for Medium Term Export Credit Insurance Quotation, EIB 92–48
6. Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50
7. Exporter's Application for Short-Term Single-Buyer Policy, EIB 92–64
8. Application for Export Credit Insurance Umbrella Policy, EIB 92–72
9. Broker Registration Form, EIB 92–79

OMB Number: 3048–0009.

Type of Review: Revision and extension of expiration date.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. The forms encompass a variety of export credit insurance policies.

Affected Public: Entities involved in the export of U.S. goods and services, including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

Estimated Annual Respondents: 2,219.

Estimated Time Per Respondent: 1 hour.

Estimated Annual Burden: 2,219.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: May 31, 2002.

Carlista D. Robinson,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB#3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR QUOTATION-EXPORT CREDIT INSURANCE
COMMERCIAL BANK INSUREDS
LETTER OF CREDIT (ELC), BANK DEDUCTIBLE (EBD) or
FINANCIAL INSTITUTION SUPPLIER CREDIT (EBS, EBM) POLICIES

THIS DOCUMENT WILL BE A MATERIAL BASIS OF THE INSURANCE IF QUOTATION IS MADE AND ACCEPTED.

1. Applicant Bank:_____ Contact:_____

   Address, include 9 digit Zip Code:_____

   E-Mail_____ Fax_____ Phone_____

   Tax ID #: _____ DUNS #: _____ Congressional District:_____

2. If you wish us to consider adding subsidiaries, branches or affiliates as Additional Named Insureds under your policy, provide full legal name and address below and answer questions 5. A. (2) or B. (2) for each Additional Named Insured.

Name	Address
_____	_____
_____	_____

3. Name of Brokerage (if any, if none insert *"none"*):_____

   Name of Contact:_____ Broker #:_____

   E-Mail_____ Fax_____ Phone_____

4. Please provide the following information unless you have submitted this information within the past 6 months for Policy No_____:

   A. (I)Rating:_____ Agency:_____ Date:_____, **or**

   (2) a. Annual report, including audited financial statements, on your bank for the past two fiscal years.
   b. The most recent available 10K and 10Q reports on your bank.
   c. Recent (within six months) credit agency report on your bank (otherwise, please attach a check for $35.00).

   B. If you are a foreign bank registered to do business in the U.S., in which state(s) are you licensed to conduct business? How are your operations in this country best described? Does your bank operate as a branch or subsidiary? To what extent are credit decisions made by your bank autonomous of headquarters?

   C. Has your bank or have the individual(s) who will be administering or placing business under this policy ever dealt with Ex-Im Bank before? ☐ Yes ☐ No If yes, describe the programs the bank or the individual(s) are familiar with, and the time period during which these contacts took place._____

   D. Is there any other information that will be of assistance in evaluating your request for a bank policy? ☐ Attached

5. A. **For Letter of Credit Policies** (add pages if necessary):

   (1) a. How are the international banking activities in your bank organized functionally? _____

   (2) a. Who are the key individuals involved? _____

   b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ☐ Yes ☐ No
   c. Please provide their resumes. (See resume form attached)
   You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

   (3) a. How long have you been confirming international letters of credit?_____

   b. From what countries?_____

   (4) Does your bank have any special expertise in particular types of transactions, regions of the world or any other areas?
   _____

   (5) Maximum value of insured letters of credit expected to be outstanding during the policy period: $_____.

OMB#3048-0009
Expiry Date 5/31/02

B. **For Financial Institution Supplier Credit** or **Bank Deductible Policies** (add pages if necessary):

(1) Describe how you develop customers for domestic or export receivable financing or factoring.

_____

(2) a. Please identify the individual(s) and administrative area which will be responsible for administering your policy.

_____

b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ☐ Yes ☐ No

c. What experience do the individual(s) identified in 5.B.(2)a.. have with Ex-Im Bank insurance _____ or private sector export credit insurance? _____

d. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) How many years, and to what dollar amount, have you financed or factored receivables?

	# of years	most recent calendar year amount
Domestic Receivables:	_____	$_____
Foreign Receivables:	_____	$_____

(4) Describe the credit procedures used in deciding to finance an exporter's receivables.

Exporter Analysis: _____

Buyer Analysis: _____

(5) a. Maximum value of financed receivables expected to be outstanding during the policy period: $_____

b. For **Financial Institution Suppler Credit Policies** Do you desire (check one) a Documentary Policy ☐
a Non-Documentary Policy ☐
or both ☐

c. After what number of days would you stop financing the exporter's receivables from an overdue buyer? _____

d. How often are financed export receivables monitored? _____

e. Please provide a specimen copy of your lending agreement with exporters for receivable financing or factoring. ☐ Attached

6. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

OMB#3048-0009
Expiry Date 5/31/02

C. (1) neither it nor its principals have been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature	Print Name and Title	/ / Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:
☐ An Ex-Im City/State Partner:_____
☐ A Broker:_____
☐ A Local Development Authority:_____
☐ An Ex-Im Regional Office:_____
☐ A U.S. Export Assistance Center:_____
☐ A Bank:_____
☐ Other (specify):_____

END

OMB#3048-0009
Expiry Date 5/31/02

Attachment to Bank Policy Application
To be filled out for each individual named.
RESUME FORM

Name:_____

Title or Position:_____

Number of years with your organization:_____

Full description of job functions including administering the policy:

_____

_____

_____

_____

Administrative experience:_____

_____

_____

_____

_____

Export-related experience including any previous experience with Ex-Im Bank:_____

_____

_____

_____

Educational background:_____

_____

_____

EXPORT-IMPORT BANK OF THE UNITED STATES

BENEFICIARY CERTIFICATE AND AGREEMENT

For Use With
Bank Letter of Credit Export Credit Insurance Policy or
Financial Institution Buyer Credit Export Credit Insurance Policy or
Medium Term Export Credit Insurance Policy

NOTE: This form is to be used only if the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not also the U.S. Exporter. In that situation the exporter must complete those parts of the Exporter Certificate EIB94-07 required in its instructions and the beneficiary must complete this entire certificate.

Name and Address of Policyholder: Name and Address of Beneficiary:

_____ _____

_____ _____

Policy No._____ _____

(to be completed by the policyholder, also see No.4.e) Beneficiary's Dun & Bradstreet Number _____

Taxpayer ID No.:_____ Congressional District:_____

Indicate (not required)if owned by a☐ woman, or an☐ ethnic minority, describe____

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws; transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

Upon representation that the Export-Import Bank of the United States ("Ex-Im Bank") has issued to the policyholder identified above an export credit insurance policy, and in consideration of either (check one):

☐ a) the payment, acceptance or negotiation of an irrevocable letter of credit in our favor; or,

☐ b) the financing of an export,

We, the Beneficiary, hereby certify to the policyholder and to Ex-Im Bank as follows:

1. The policyholder has either (check one):

☐ a) informed us of an irrevocable letter of credit with Identification No._____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or,

☐ b) to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export, for which we have received payment.

2. The above referenced irrevocable letter of credit or the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

a) Name and address of buyer_____

b) Description and quantity of product(s)/service(s)_____

c) The product(s) are: ☐ New, ☐ Used. If used, attach Used Equipment Questionnaire form EBD-M-25.

d) Place of Shipment_____ e) Date of Shipment_____

f) Contract Price to Buyer:

(i) Products/Service	$_____
ii) Less discounts or similar allowances	$_____
iii) Plus total insurance, freight or other delivery charges included in the transaction	$_____
Subtotal:	$_____
iv) Less cash payment (minimum 15% required for MT)	$_____
(v) Total final net delivered financed portion	$_____

3. To the best of our knowledge and belief, the products described above were **shipped from the United States**, in accordance with paragraph 2 above.

4. With respect to products
a) which could be used for **military** purposes,
b) which could be components of a product or equipment which could be used for military purposes,
c) which could be used to manufacture products or equipment which could be used for military purposes,
d) listed on the United States **Munitions List** (part 121 of Title 22 of the Code of Federal Regulations), or
e) purchased by or for use by security, military or defense organizations, ☐ we ____ have or ☐ the policyholder ____
Initial Initial
has received the written approval of the Ex-Im Bank for such sale prior to shipment of the products **and attached it** to this certificate. Submit a Defense Product Questionnaire EIB92-61 in order to obtain such approval.

5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

6. To the best of our knowledge and belief the products are **for use only in countries** in accordance with Ex-Im Bank's Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov> Country and Fee Information.

7. a) neither we nor our principals have been within the past 3 years:
(1) **debarred**, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(2) formally proposed for debarment, with a final determination still pending;
(3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
b) We certify that we are **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
c) We has received a **written** statement of exception from Ex-Im Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (a) (1) through (3) and (b).
We further certify that we have not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (a) (1), (2) or (3) above.

8. We will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
a) an officer or employee of any U.S. Government agency, or
c) a Member of Congress or a Member's employee, or
d) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

9. we have not, and will not, engage in any activity in connection with this transaction that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of our knowledge, the performance by the parties of their respective obligations covered or to be covered under this transaction does not and will not violate any applicable law.

10. The representations made and the facts stated by us in these certifications and its attachments **are true, to the best of our knowledge and belief, and we have not misrepresented or omitted any material facts.** We further understand that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

By:_____ Signature:_____
Print Name (Authorized Representative of the Beneficiary)

Title:_____ Date:_____

If the beneficiary can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

OMB # 3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION for a FINANCIAL INSTITUTION BUYER CREDIT POLICY

(Please Print or Type) APP. NO._____(Ex-Im Bank Use Only)

INSURANCE BROKER: If none, insert "*none.*" Broker #:

Name of Brokerage: Phone #:

Contact Person: Fax #: E-Mail:

1. APPLICANT: (Ex-Im use only: Insured #:_____)

Applicant Name: Phone #:

Contact person: Fax #:

Position Title: E-Mail:

Street Address:

City: State: Zip Code:

Please attach the following information unless you submitted this information within the past 6 months for Policy No._____.

a. Taxpayer ID #:_____ Duns #:_____ Congressional District:_____ **AND**

b. Market Rating:_____ Rating Agency:_____ Date:_____, **OR**

c. (1) ☐ Your most recent published annual report, or audited financial statements.
(2) ☐ Your most recent available 10K and 10Q reports.
(3) ☐ A credit agency report dated within 6 months. If unavailable, attach check for $35.00 to cover Ex-Im Bank's cost in ordering report.
(4) How long have you been lending internationally?_____
(5) To what countries do you actively lend?_____.
(6) How is your foreign loan portfolio broken down between government _____% and private _____% sector buyers?
(7) How often do you visit your overseas buyers?_____
(8) ☐ Attach the names, titles, and the international lending backgrounds of the individuals responsible for administering Ex-Im policies.

2. TRANSACTION:

a. This insurance application is for, check one, a credit extended by you based on:
your relationship with the Buyer or Guarantor , a☐ Buyer Credit, **or**, your relationship with the exporter, a☐ Supplier Credit.
b. This application is for ☐ Comprehensive (Commercial and Political Cover) or☐ Political Only Cover.
c. This application is for a ☐ Single Financing or a ☐ Revolving Line.
d. Credit limit requested $_____
e. Payment terms requested_____.
f. Ex-Im Bank requires a written debt obligation, i.e., promissory note or draft. If none, check here ☐ and provide a full description of documentation which constitutes the buyer's debt obligation._____.
g. Indicate whether ☐ negotiating or ☐ financing mandate received.
h. For buyer credits, provide a brief description of the products (for supplier credits see 5.c.)_____.

3. BUYER: The "buyer" is the entity which agrees to repay the credit (loan). Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) for Buyers to determine the likelihood of approval:

a. This buyer is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector. (Ex-Im use only: File #:_____)

Buyer Name: Duns #:

Contact person: Phone #: Fax #:

Position Title: E-Mail:

Street Address: City:

State/Province: Postal Code: Country:

The following information on the buyer is necessary unless the credit is based on a guarantor, if so check here☐ and complete for the guarantor

b. For **all applications** provide in an attachment:
(1) ☐ A summary of credit facilities (insured and uninsured) extended by the☐ applicant or the ☐ exporter (for Supplier Credits) to this buyer/guarantor specifying the high credit, whether secured or unsecured, and tenor(s) with details on past dues (if applicable), or☐ None.

(2) For ☐ **non-sovereign public** or ☐ **private** buyers/guarantors on which comprehensive cover is requested, provide the following:
(a) Market Rating:_____ Rating Agency:_____ Date:_____, **OR**
(b) ☐ A bank reference not older than 6 months from date of application **and**
(i) ☐ 2 Ex-Im Bank Trade Reference forms (EIB99-14) dated within 6 months of the application **and**
(ii) ☐ For a credit limit up to $1 million, the last 2 fiscal year end audited or signed unaudited financial statements with notes.
☐ For a credit limit over $1 million, provide 3 fiscal year end audited statements with notes and the most recent interim statements with notes if the last fiscal year end is more than 9 months prior to application.
(3) ☐ The applicant's credit memorandum on the buyer/guarantor.
(4) Have you visited the buyer/guarantor? ☐ No ☐ Yes, if yes give date: _____ and attach a copy of your call report.

OMB # 3048-0009
Expiry Date 5/31/02

4. GUARANTOR: The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below and provide the information in 3.b. if the credit is based on the guarantor. (Ex-Im use only: File #:)

This guarantor is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector.

Guarantor Name: Duns #:
Contact person: Phone #: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Postal Code: Country:

5. For **SUPPLIER CREDITS** only:

NOTE: You are **not** required to fill out this section for **Buyer Credits** but, if any information is known, please complete in a, b and c.

a. EXPORTER:

The "exporter" is the entity which contracts with the buyer for the sale of the U.S. items and services. (Ex-Im use only: File #:)

Exporter Name: Phone #:
Contact person: Fax #:
Position Title: E-Mail:
Street Address: City:
State: Zip Code:
Taxpayer ID #: Duns #: Congressional District:
Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:

If "Documentary" cover is desired, check here ☐ and attach the following unless the exporter submitted it within the past 6 months for Policy No._____. Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Exporter Standards for an Enhanced Assignment to determine the likelihood of approval of documentary cover if the exporter, using the US Small Business Administration guidelines, is a small business.

(1) ☐ A bank reference on the exporter dated within 6 months of the application **and**
(2) ☐ 2 trade references on the exporter dated within 6 months of the application **and**
(3) The last 2 fiscal year financial statements of the exporter as follows:

Claim Payment Limit (Credit Limit x %of cover)	Minimum Requirement
☐ $500,000 or less	signed by an authorized officer of the exporter
☐ $500,001 - $999,999	reviewed by a CPA with notes attached
☐ $1,000,000 or more	audited by a CPA with opinion and notes attached

NOTE: The net worth, including subordinated shareholder debt, of the exporter must be at least 20% of the Claim Payment Limit.

b. SUPPLIER: The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.

Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #:)

Supplier Name: Phone #:
Contact person: Fax #:
Position Title: E-Mail:
Street Address: City:
State: Zip Code:
Taxpayer ID #: Duns #: Congressional District:
Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:

c. PRODUCTS: All applicants should note that there are specific United States content requirements for all transactions and that exporters are required to complete an Exporter's Certificate form EIB-94-07 for "Documentary" cover.

(1) Products: ☐ New ☐ Used (If used, complete and attach Used Equipment Questionnaire, EIB-92-63)
(2) Description of products*:
(3) Are products listed on the United States Munitions List (part 121 of Title 22 of the Code of Federal Regulations)? ☐ Yes ☐ No
(4) Is each product produced or manufactured in the United States? ☐ Yes ☐ No
(5) Is at least one half of the value, exclusive of price mark-up, exclusively of US origin? ☐ Yes ☐ No
(6) Will any value be added to the products after export from the United States? ☐ Yes ☐ No
If yes please attach an explanation; the transaction may not be eligible for coverage.

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

OMB # 3048-0009
Expiry Date 5/31/02

6. **PARTICIPANTS:** Describe any direct or indirect ownership or family relationship between any of the participants in this transaction. If none, insert *"none"*._____.

☐ the applicant **and** for supplier credits: ☐ the exporter, or
for buyer credits: ☐ the buyer and ☐ the guarantor (if any).

7. **The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**

2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

C. (1) neither it nor its principals have been within the past 3 years:

(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or

(b) formally proposed for debarment, with a final determination still pending;

(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.

(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or

(2) a Member of Congress or a Member's employee, or

(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);

(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.

(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);

(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;

(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____ _____ ____/____/____

Signature Print Name and Title Date

Note: Please respond to all items and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker or city/state participant to review and send, this application to:
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office:_____

☐ An Ex-Im City/State Partner:_____

☐ A U.S. Export Assistance Center:_____

☐ A Broker:_____

☐ A Bank:_____

☐ A Local Development Authority:_____

☐ Other (specify):_____

END

EXPORT-IMPORT BANK OF THE UNITED STATES
Financing or Operating Lease Coverage
Explanation of Application Form for Export Credit Insurance

THIS EXPLANATION IS GIVEN ONLY FOR THE PURPOSE OF ASSISTING YOU IN REVIEWING THE APPLICATION FORM. THE COMPLETE TERMS AND CONDITIONS OF COVERAGE ARE SET FORTH IN THE POLICY ITSELF. PLEASE NOTE THAT ALL UNDERLINED WORDS IN THIS EXPLANATION AND THE APPLICATION FORM ARE DEFINED IN THE POLICY.

INTRODUCTION - Two Types of Coverage: Operating and Financing Leases

The Export-Import Bank of the United States (Ex-Im Bank) has created two credit insurance policies for the leasing industry, one entitled Operating Lease Policy, and the other Financing Lease Policy. Each provides a unique system of coverage which is described below. It is important to know that the terms operating lease and financing lease are used herein as descriptive titles for the purposes of the policies only. Definitions of an operating lease, true lease, financing or full payout lease vary depending upon whether one is speaking in the context of accounting, taxes, commercial law, or international trade. These definitions do not affect your choice between the two Ex-Im Bank policies. The choice between the Operating Lease Policy or Financing Lease Policy depends upon the characteristic of the transaction. The Finance Lease Policy must be used if the transaction is essentially a conditional sale and the intent of the lessor is to transfer title at the end of the lease period. Usually there is no or little residual value. The Operating Lease Policy must be used if the transaction is not essentially a sale, but involves the rental concept (i.e, the lessor does not intend to transfer title to the lessee at the end of the lease period). Usually there is a significant residual value. All transactions which have residual value greater than or equal to 25% of the full value of the leased products must use the Operating Lease Policy.

The separation between the two types of coverage is due in part to the necessities of compliance with certain international agreements pertinent to medium-term sales. For those purposes, the financing lease is viewed as a medium-term sale and therefore an advance payment from the lessee to the lessor is required. An operating lease, however, which embodies the expectation of repossession of a leased product, which product may or may not have retained its expected market value, can be viewed by Ex-Im Bank as a rental and thereby can be underwritten by Ex-Im Bank without the imposition of an advance payment requirement.

Coverage is made available for leased products of United States origin as defined by the current underwriting guidelines. Used products may be covered. Refer to Ex-Im Bank's Fact Sheet on Used Equipment Guidelines EIB92-63. Lessors may be located in the United States, the country where the lessee is located, or a third country. Coverage is available for products which have been previously exported from the United States, however, products which have been exported as a sale or financing lease must be returned to the United States for at least one year to be eligible for coverage. Products which have been exported under an operating lease must also be returned to the United States but there is no minimum repatriation period required.

STRUCTURE OF EX-IM BANK'S FINANCING LEASE POLICY

Similar to the structure of a medium-term sale transaction, there is a requirement of a 15% advance payment from the lessee to the lessor (applicant/insured) on or before the delivery of the leased products. The advance payment may be financed. You can only insure the remaining 85% of the lease transaction.

Should the lessee default, coverage is provided for the insured percentage of each lease payment as it falls due until the end of the lease term. Coverage is usually provided at 100%. At the time of claim payment, the insured is obligated to transfer to Ex-Im Bank all remaining obligations of the lease, as well as title to the leased products. The coverage of lease payments as they become due remains effective regardless of failed repossession efforts for any reason or Ex-Im Bank's own

subsequent repossession of a leased product which has lost its market value.

STRUCTURE OF EX-IM BANK'S OPERATING LEASE POLICY

Coverage for Stream of Payments During Repossession Efforts - This policy divides coverage into two distinct parts, the first being for the stream of payments which fall due during a limited repossession efforts period after default of the lessee. Although the length of the repossession efforts period will be underwritten on a case-by-case basis, it will generally extend to cover those periodic and approved non-periodic payments which fall due during a maximum period of five months after the default. The intention of this first coverage is to maintain the insured's stream of payments while he takes action to repossess the leased products. Coverage for the stream of payments is usually provided at 100% for sovereign lessees and 90% for all others.

Coverage for Governmental Prevention of Repossession - If the insured has elected to purchase this coverage and is unable to effect repossession during the repossession efforts period, he may then claim under Risk 5 coverage, but only if repossession is prevented by the type of government action specifically described under Risk 5 of the Operating Lease Policy. Generally, those risks are referred to as expropriation or confiscation. Coverage will be limited to the actions of the governments of those countries which the insurer agrees to specify in the declarations. A failure of the insured to effect repossession for reasons other than those specified in Risk 5 is not covered. Note that the valuation of coverage under Risk 5 is the fair market value of the leased products at the time of claim submission. The coverage percentage under Risk 5 is 100%.

POLICY ISSUANCE

Both the Operating Lease Policy and Financing Lease Policy are of the single transaction type, meaning that a separate policy is issued for each separate lease you insure with Ex-Im Bank. Upon the review and approval of your application, Ex-Im Bank will issue a commitment notice for 90 days, reflecting the coverage parameters, including the credit limits and premium due, for your lease transaction. The policy is issued once you pay the applicable premium which is due prior to the expiration of the commitment notice.

The Operating Lease Policy offers "limits" type coverage:

> Under Risks 1, 2, 3, 4 on the stream of payments, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank has approved, or less, if you deem it appropriate. Ex-Im Bank's maximum claim payment for these risks would be the insured percentage of the loss up to the lesser of the actual amount of the limited number of periodic and non-periodic payments specified in the policy declarations or the coverage credit limit you have purchased.
>
> In a similar manner, for Risk 5, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank approves, or less if you desire, to cover the value of the leased products should their repossession after a default be prevented by one of the forms of governmental intervention set forth in the policy. Under Risk 5, the claim payment would be the insured percentage of the fair market value at the time of claim, but limited by the credit limit of coverage you have purchased.
>
> Note that prior to the time of policy issuance you must make the final decision on your credit limits, taking into consideration whatever factors you choose, including the possibilities that a default and prevention of repossession

may occur very early during the life of the lease.

Under the Financing Lease Policy, Ex-Im Bank's maximum claim payment for Risks 1, 2, 3, 4 would be the insured percentage of the amount of the insured's loss on approved non-periodic payments and on the principal and covered interest of each actual periodic payment as set forth on the schedule in the policy declarations.

FURTHER POINTS OF CLARIFICATION

o Ex-Im Bank coverage under both the Operating and Financing Lease Policies is available for both the rental portion of the lease, which is referred to as periodic payments, and also other non-rental type payments, referred to as approved non-periodic payments. Periodic payments must be due from the lessee to the insured under the lease at equal time periods, but the amounts of such payments may be unequal.

o The concept of a non-periodic payment is intended to include those payments which are obligations of the lessee under the lease, but for which payment is due upon the occurrence of certain specified contingencies other than the passage of equal periods of time. Such obligations might include service or maintenance payments payable by the lessee to the insured lessor. If such non-periodic payments are payable to a third party, however, they can be insured only if the lease contains an obligation of the lessee to reimburse the insured if such payments are not made to the third party by the lessee when due and are instead made by the insured. Your application for coverage of such non-periodic payments will be underwritten by Ex-Im Bank, and a credit limit will be entered for each approved non-periodic payment.

o Both policies require that the lease documentation set forth certain obligations. Before Ex-Im Bank can realistically underwrite a transaction, it is usually necessary to review at least a draft of the lease documentation prepared for the transaction you wish to insure. That draft should be as complete as possible when submitted.

POLICY RISK TYPES

Risks 1, 2, 3 - political risks of non-payment
(currency inconvertibility, cancellation of export or import licenses, war, insurrection, requisition or expropriation)

Risk 4 - commercial risk of non-payment
(protracted default, insolvency)

Risk 5 - governmental prevention of repossession of leased products (expropriation, confiscation - applicable to Operating Lease Policy only)

Information about Ex-Im programs, the materials and forms mentioned in these Instructions and the Application, names of Credit Reporting and Rating Agencies may be obtained:
- from Ex-Im's Website <http://www.exim.gov>,
- by calling an Ex-Im Regional Office: Midwest: Chicago (312) 353-8081, Northeast: New York (212) 916-0320, Southeast: Miami (305) 526-7425, Southwest: Houston (281) 721-0465, MidAtlantic: Washington,DC (202) 565-3902, West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150, San Francisco (415) 705-2285,
- by calling the Ex-Im Business Development Division 1-800-565-EXIM (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571.

A **non-binding insurance premium quote** can be determined using the Website's Exposure Fee Calculator.

OMB #3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR EXPORT CREDIT INSURANCE
FINANCING OR OPERATING LEASE COVERAGE

Date:_____
App. No.:_____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Applicant Name and Address, use 9 digit zip code	2. Broker Name and Number
	(If none, state "None") Brokerage: Broker No.:
Attn.: Telephone No.: Fax No.: E-Mail:	Attn.: Tel No.: Fax No.: E-Mail:

3. Lessee Name and full Address
(If mailing address is a P.O. Box, also provide street address)
File No.:_____
(Ex-Im Bank Use Only)

4. Guarantor Name and Address (If none, state "None")
File No.:_____
(Ex-Im Bank Use Only)

(Please complete Parts I, II, III, IV and V for prompt processing of your request.)

PART I -- INFORMATION ABOUT THE APPLICANT

5. Please attach the following information

Your most recent published annual report or financial statements (balance sheet and income statement) signed by company officers. If on file, please indicate. ☐

Recent (within 12 months) credit agency report on applicant. If unavailable, please attach check for $35.00 to cover the Export-Import Bank of the United States' (Ex-Im Bank's) cost in ordering a report. If you have submitted this report or $35.00 to Ex-Im Bank during the past 12 months, please indicate and the requirement will be waived. ☐

6. Nature of business (e.g., manufacturer, independent leasing company, leasing subsidiary of a bank, etc.):

7. Years engaged in: a) Leasing within your country_____ b) Leasing outside your country _____

8. a) Total leases and sales during the current and past two years:_____ _____ _____

Within your country	$_____	$_____	$_____
Outside your country	$_____	$_____	$_____

b) Total Employees:_____ c) Standard Industrial Classification (SIC) Code (if known):_____

d) Tax ID #:_____ e) DUNS #: _____ f) Congressional District:_____

g) Indicate (Not Required) if owned by a ☐ woman, or an ☐ ethnic minority, describe_____

OMB #3048-0009
Expiry Date 5/31/02

9. What are your principal foreign markets?

10. Principal products leased (including identification of major suppliers if other than applicant):

PART II - INFORMATION ABOUT THE TRANSACTION

11. Check one: ___ Firm Lease ___ Negotiating Lease ___ Responding to Invitation to Bid

12. Total value, term and schedules of payments under the lease:

(Attach a copy of the final lease if available, or a draft copy setting forth at least those provisions required by the policy.)

13. Leased products ___New ___ Used (If used, attach Used Equipment Questionnaire.)

a. Specify quantity, serial no., model no., year of manufacture, fair market value per unit and how derived, and a description of what the product does.

b. Is there an active market for this particular product model number in the U.S. today, or is this product somewhat obsolete in the U.S. but still in demand overseas?

c. Manufacturer or vendor if other than applicant:_____

d. Is each leased product produced or manufactured in the United States to the extent that at least 85% of the value, exclusive of price mark-up, has been added by labor or material exclusively of U.S. origin? ___Yes ___No

e. Original purchase value $_____

f. Estimated value of leased products at the end of lease term $_____

g. Who will own the leased products at end of lease term?_____

_____

h. Is title of ownership on each of the leased products unencumbered? ___Yes ___No If no, please attach an explanation.

i. Does the lease give you the right to repossess the leased products in the event of default? ___Yes ___ No Identify the reference in the lease regarding repossession.

j. Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations) ☐Yes ☐No

See the U.S. Dept. of Commerce Website at <http://www.ita.doc.gov/import_admin/records/status> for a list of products and countries with Anti-Dumping or Countervailing Duty sanctions or call Ex-Im's Country Risk Analysis Division at (202) 565-3730.

14. Is the lessee going to be the user of the leased products or are the leased products expected to be released or sold to another entity? ____ Yes ____ No, if no, identify the entity and its location: _____.

15. Have you ever had to repossess products sold to or leased into the lessee's country? ___Yes ___ No

a. If yes, were you successful in your repossession? ___Yes ___ No

b. If you have repossessed products in the lessee's country, where did you resell or release them?

OMB #3048-0009
Expiry Date 5/31/02

16. What procedures or measures (i.e., conforming with local documentation requirements and standard government regulations) have you undertaken to assure:

    a. that you maintain good title to the leased products in the country of the lessee in this transaction?

    b. that you will be able to repossess and re-export the leased products?

17. Does the lease establish an unconditional obligation of the lessee to make non-cancelable:

    a. periodic payments?___Yes ___ No

    b. non-periodic payments?___Yes ___ No

18. Shipment of leased products will begin on or before_____(Date).

19. Other insurance:

    a. Ex-Im Bank requires that you be loss payee for transit insurance for the actual cash value of the leased products at the time of shipment. Has transit insurance been obtained or is it being obtained? ___Yes ___No

    (i) For what actual cash value? _____

    (ii) With which carrier? _____

    (iii) Effective dates: from _____ to _____

    b. Ex-Im Bank requires that casualty insurance on the actual cash value of the leased products be maintained at all times. Has casualty insurance naming you as loss payee been obtained or is it being obtained? ___Yes ___No

    (i) At what time periods will you require a certification of casualty insurance from the lessee?

PART III - POLICY SELECTION INFORMATION (Refer to "Explanation of Application" form)

☐ Financing Lease Policy
(Answer only questions 20 and 21)

☐ Operating Lease Policy
(Answer only questions 22, 23 and 24)

FOR FINANCING LEASE POLICY

20. a. Contract price of the leased products $_____

    Advance payment (minimum 15%) $_____

    Credit Limit for Principal amount of periodic payments $_____

    b. Repayment terms for periodic payments
    ___Monthly ___Quarterly ___Semi-Annually in_____ (number) installments beginning_____

    c. Attach as "Exhibit A" a schedule of periodic payments breaking out the principal amounts and interest for each periodic payment.

    d. Do you wish to insure any non-periodic payments? ___Yes ___No

    If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

21. Against the actions of the government of which countries do you wish insurance under Risks 2 and 3?

FOR OPERATING LEASE POLICY

22. Repossession

    At what point after default do you contemplate beginning repossession on this transaction and how much time do you estimate will be required for a successful repossession?

23. What is the length of the repossession efforts period you wish to insure?

24. a. Requested credit limit for periodic payments coming due during the requested repossession efforts period
    $_____

OMB #3048-0009
Expiry Date 5/31/02

b. Attach as "Exhibit A" the schedule of periodic payments

25. Do you wish to insure any non-periodic payments? ___Yes ___No
If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

26. Do you desire coverage for the risk of prevention of repossession ("Risk 5") of the leased products? ___Yes ___No
Credit Limit of fair market value you wish to insure under Risk 5: $_____
(Risk 5 premium rates will be applied to this amount only.)

27. Against the actions of the government of which countries do you wish insurance under Risks 2, 3, and 5?

PART IV - INFORMATION ABOUT THE LESSEE

28. Please attach the following information:

- Credit reports on the lessee, and guarantor (if any) not older than one year from date of application. Please provide one report from one of the sources listed in Column A and one from Column B.

Column A	Column B
__ U.S. Commercial Bank	__ Domestic Credit Agency
__ Foreign Commercial Bank	__ Foreign Credit Agency

- Minimum two years signed financial statements (preferably audited and in English) on the lessee, and guarantor (if any). Three years financial statements may be required by Ex-Im Bank on certain requests. Your internal credit analysis can be submitted with this application.

29. a. Summary of credit experience during the last three years with this lessee including uninsured experience. (Please include any additional information you may consider appropriate.)

	_____	_____	_____
Total Leases and Sales each year	$_____	$_____	$_____
Highest Amount Owing during the Period	$_____	$_____	$_____
Payment (Lease) Terms	_____	_____	_____

b. Describe lessee's payment history (check one):
__ No prior experience __ Prompt/Discount __ 1-30 days slow
__ 30 - 60 days slow __ More than 60 days slow

c. Amount now owing $_____ as of_____(Date).

d. Amount now past due (indicate maturity dates and explanation):

30. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the lessee or guarantor. If none, state "None." _____.

31. U.S. trade references (names/addresses/phone numbers/contacts). Submit copies of current reports if available.

32. Lessee's principal commercial banks (names and addresses):

Please answer all questions and sign the application. Applications not completely filled out or not submitted with at least the following information may be withdrawn:

- Copy of lessee's application (or substitute) to lessor for the lease transaction.
- At least a draft copy of the lease agreement prepared for the transaction you wish to insure.
- Financial statements on the applicant, lessee, and the guarantor (if any).
- Credit reports on the applicant, lessee, and the guarantor (if any).
- "Exhibit A" (schedule of periodic payments you wish to insure).

OMB #3048-0009
Expiry Date 5/31/02

PART V - The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a. it is (**check one**):

1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
2) ☐ an individual or partnership **resident in** the United States; **or**
3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b. The applicant certifies that, to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally for use as indicated below. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original lessee's country, please complete item (2):

1) ☐ By the lessee in the country specified above.
2) ☐ If not, name country **where** products will be principally used: _____ and **by whom**: _____.

c. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the lease and the trustworthiness of the lessor and lessee.

d. 1) neither it nor its principals has been within the past 3 years:

a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
b) formally proposed for debarment, with a final determination still pending;
c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

e. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

1) an officer or employee of any U.S. Government agency, or
2) a Member of Congress or a Member's employee, or
3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

f. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g. 1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.
3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate,

OMB #3048-0009
Expiry Date 5/31/02

including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

h. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature	Print Name and Title	/ / Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov> See "Instructions" Page 3 for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office:_____

☐ An Ex-Im City/State Partner:_____ ☐ A U.S. Export Assistance Center:_____

☐ A Broker:_____ ☐ A Bank:_____

☐ A Local Development Authority:_____ ☐ Other (specify):_____

EIB form 92-48
Revised 10/01

Part 1 of 3, Page 1 of 4

OMB No. 3048-0009
Expires 3/31/02

APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION INSTRUCTIONS

INTRODUCTION

The Export-Import Bank of the United States (Ex-Im) is an independent federal agency which provides financing support for the export of U.S. goods and services. Several programs are available, including Direct **Loans** to foreign buyers, Financial **Guarantees** of payment for lenders to foreign buyers, **Working Capital Loan Guarantees** of payment by a U.S. exporter to its lender, and **Export Credit Insurance**. Ex-Im issues **Letters of Interest** indicating the eligibility of transactions for these programs, see "Information" below to obtain an application.

These instructions are for an application for export credit insurance by either a lender or exporter on a transaction involving sales of capital goods and services with a medium repayment term to a single buyer. For leases see EIB92-20 Fact Sheet on Lease Policies and EIB92-45 Instructions and Application for Lease Policies.

INFORMATION about Ex-Im programs; the fact sheets and **forms mentioned in these instructions** and the application; information on Private Export Financing Corporation (PEFCO) export financing; names of: credit reporting and rating agencies, banks interested in export financing, insurance brokers and Ex-Im City/State Participants **may be obtained:**

- from Ex-Im's **website** <http://www.exim.gov> , see Programs, then Publications, then Export Credit Insurance or
- by calling an Ex-Im **Regional Office**: Northeast: New York (212) 916-0320,MidAtlantic: Washington, D.C. (202) 565-3902,
  Midwest: Chicago (312) 353-8081,
  Southeast: Miami (305) 526-7425, Southwest: Houston (281) 721-0465,
  West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150,San Francisco (415) 705-2285, or
- by calling the Ex-Im Business Development Division **1-800-565-EXIM** (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571.

REQUIREMENTS TO APPLY for a medium term export credit insurance policy:

There is **NO Application Fee.**
A **non binding insurance premium rate** can be determined using the Ex-Im website **Exposure Fee Calculator** or you may call Ex-Im, see above.

1. The **REASON** Ex-Im's support is requested must demonstrate that the transaction will not go forward without support. See the application form question no. 5.

2. Use of a registered Ex-Im insurance **BROKER** or an Ex-Im **CITY/STATE PROGRAM PARTICIPANT** is recommended but not required. Use of a broker or participant does not affect the Ex-Im premium rate. Regional Offices will provide guidance on applications as well as lists of brokers, city/state program participants, and lenders interested in providing export financing. All information provided in an application will be held **confidential**, subject to the Freedom of Information Act, 5 USC 552, the Privacy Act of 1974, 5 USC552a, and the Right of Financial Privacy Act of 1978, 12 USC 3401 except as required to be disclosed under applicable laws.

3. The **APPLICANT** must be either an exporter or a financial institution with an insurable interest in the transaction. A Taxpayer ID number is requested to report on claim payments. The Standard Industrial Code (SIC) or NAICS Code, gross sales and number of employees are requested to determine eligibility for small business benefits. Gender and ethnic minority ownership interest information are requested but not required. Also, see the **applicant certifications** on the **application** and Part 3 of the application, the **Credit Information Checklist**, which is required to demonstrate the ability of the applicant and exporter or supplier to perform the export.

4. The payment obligation must be in U.S. dollars, must be **unconditional** and must be evidenced by a **PROMISSORY NOTE** (single disbursement or grid forms EIB-92-58A or B, special notes for Mexico and Venezuela) or conforming to the requirements listed in the insurance policy which allow use of a note form other than Ex-Im's.

5. The **EXPORT** must involve shipment of capital goods from the U.S. Services must normally be provided by U.S. based personnel and may be provided in the U.S. or at the foreign site. Used equipment may be supported, see Used Equipment Questionnaire EBD-M-25 for details. Breeding cattle or livestock may be supported, see Livestock Questionnaire EIB92-62. Allowance is made for goods and services that are not 100% U.S. origin as follows:

- The Exporter's Supply Contract may include U.S. and "eligible" foreign content.
- Up to 15% of the Exporter's Supply Contract may be eligible foreign content.
- If more than 15% of the Exporter's Supply Contract is eligible foreign content, Ex-Im may provide support for the U.S. content only. There is no minimum U.S. content requirement.

"Eligible Foreign Content" includes goods imported from a foreign country and shipped from the U.S. with the export.

"Ineligible Foreign Content" includes goods shipped from any other country, or services provided in a foreign country, other than the buyer's.

"Goods assembled outside the U.S." by foreign personnel are **normally ineligible** for insurance cover.

"Local costs" are foreign goods and services originating in the country of the buyer and may only be included in the insured amount if approved by Ex-Im Bank.

See **Insurance Program Foreign Content Requirements** EIB99-21 and **Local Cost Policy** EBD-M-05 for details.

Military goods and services and sales to or for use by military/police/security force entities are **normally ineligible**, see Defense Product Questionnaire EIB-92-61. However, goods on the US Munitions List are not necessarily excluded.

Fees for bank, legal, or other technical services, may be financed, see Financing of Fees for **Ancillary Services** EBD-M-13

Ex-Im has cooperative agreements with some foreign export credit agencies like itself. Ex-Im may be able to provide full support for goods and services which do not meet the domestic content requirements **if** the foreign content is from one of those nations **and** there is no other U.S. competition. Ex-Im's Reinsurance Questionnaire Attachment H to EIB95-10 will be required. See Cooperative Insurance Agreements with Foreign Export Credit Agencies (ECAs) EIB99-11.

Capital equipment used to manufacture/produce **exportable goods**, including agricultural commodities, from the country of importation will require a detailed description including changes in the level of production.

6. The **PAYMENT TERMS** to be insured are a maximum of 5 years and will be determined by the details of the transaction or credit including price, buyer, borrower, guarantor, goods, services and use. Sales to dealers, distributors or others for **resale** are limited to 2 years. Some exceptions, such as, sales of certain aircraft or to match confirmed foreign government supported competition, may be eligible for up to 7 years. "Grace" periods and "balloon" payments are **not** allowed. Further details may be found in Ex-Im Bank Standard Repayment Terms EBD-M-26.

EXPORTER'S SUPPLY CONTRACT	**MAXIMUM TERM**
less than $80,000	2 years
$80,000 - less than $175,000	3 years
$175,000 - less than $350,000	4 years
$350,000 or more	**5 years**

The **NET CONTRACT PRICE** is the amount to be shown in the exporter's invoice related to the goods and services to be exported and services to be performed by U.S. based personnel. If there is more than one exporter or supplier under a transaction, the Net Contract Price is the sum of the Net Contract Price specified in each of the exporter's or supplier's Exporter's Certificates EBD-M-56. The Net Contract Price **includes** eligible foreign content but **excludes** local costs. Shipping and insurance charges may be included in the Net Contract Price but, if from a foreign source, are considered part of eligible foreign content. Ancillary service fees may be included in the Net Contract Price if approved by Ex-Im Bank. The term "Net Contract Price" as used in the Exporter's Certificate, has the same meaning as the term "contract price" as used in medium term policies.

The **FINANCED/INSURED PORTION** of the contract price is the amount left after a **required minimum 15% cash payment** due **prior** to delivery or, for bank policyholders, funding. The cash payment may be financed separately, but is not included in the financed/insured portion.

The **FINANCED/INSURED PORTION** may not be more than **the lesser of**:

- **$10 million**, excluding interest and the premium; or
- **85% of the Net Contract Price**; or
- the **U.S. content** of the Exporter's Supply Contract.

The premium may be included in the insured financed amount without paying "premium on premium." This will increase the premium rate (see the Ex-Im website Exposure Fee Calculator).

The **STARTING POINT** of the payment obligation and corresponding first installment are determined by the shipment date(s), installation period (if any), consolidation of notes, and frequency of payments. See Guidelines for Starting Points EIB99-16. For semi-annual payments after a single shipment without installation, the starting point is the shipment date and the first installment is due within 6 months.

7. The **BORROWER, GUARANTOR, BUYER** and **END-USER** must be foreign entities in **COUNTRIES** for which Ex-Im is able to provide support, see Ex-Im's **Country Limitation Schedule** (CLS) at www.exim..gov . There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. You may call Ex-Im Bank's Policy and Planning Division at 202-565-3770 for details. Also, see Part 3 of the application and EBD-M-39 for **credit information** required.

A **GUARANTOR** may be required when the borrower is not creditworthy or under certain other circumstances. See EBD-M-39. For example: guarantors **are required** for the **primary source of repayment** (PSR), which may be **either** the borrower **or** guarantor, under the following circumstances:

- if the PSR is a "start-up" company;
- if the ability of the PSR to pay the debt depends on cash flow from an expansion or new line of business (see EBD-M-39, Part II for exceptions to this requirement on transaction of $1 million or more);
- if more than 25% of PSR sales are **to** or **from** a related/commonly owned company, its guarantee is required;
- if the PSR is a private, non-financial institution with sales revenue of less than U.S. $50 million, the insurance requires the personal guarantee of:
  - an owner holding at least 50%, **or**
  - if no individual has a majority position, of any owner(s) holding 20% or more. This requirement is not applicable when no individual holds at least 20%, however a guarantor may still be required.

8. Ex-Im has published **MEDIUM TERM CREDIT STANDARDS,** EBD-M-39, in order to expedite service. Transactions meeting all of the standards have a high probability of being favorably considered, absent any unusual circumstances.
   PART I, transactions of up to and including $1 million - describes the standards and what can be done if they are not met.
   PART II, transactions of greater than $1 million, up to and including $5 million - describes the standards and what can be done if they are not met.
   PART III, transactions of greater than $5 million - describes the standards and under what circumstances **required supplemental financial information in Attachment C** of EBD-M-39 must be provided.

Applicants are **encouraged to review the standards.** Applicants should determine if transactions of up to and including $5 million conform to standards and submit calculations showing the standards are met or provide the additional information described therein when standards are not met. This will **significantly reduce the time** to process the application.

INSURANCE COVER offered:

1. Sales must be to a single or to "joint and several" borrower(s). There are **no medium term "multi-buyer"** policies, except those issued on bank-to-bank lines. Applicants may request cover for:
   Single sale, single shipment transactions with or without installation by the exporter;
   Single sale, multiple shipments transactions, with or without installation by the exporter;
   Repetitive sales under a line of credit extended by a financial institution or exporter to a buyer, or sales by multiple exporters to multiple buyers under a medium term line of credit from one bank to another.
   Applicants will receive a time sensitive binding Commitment from Ex-Im to issue single shipment insurance if approved. Multiple shipment and repetitive sales policies are automatically issued if approved and have a final shipment date.
   Applicants, their brokers or city/state participants are typically advised by a facsimile letter of decisions to approve, deny or require additional information on applications.

2. **COVERAGE**: Applicants may request:
   COMPREHENSIVE cover against all the commercial (including devaluation) and political (excluding devaluation, including transfer/inconvertibility) risks specified in the policy which may cause default, **or**
   POLITICAL risks cover only.
   Transactions with **sovereign** buyers or guarantors (those offering the full faith and credit of the country of importation) receive comprehensive cover. Applicants related to the borrower will receive political risks cover only.

3. **PRE-SHIPMENT**: Applicants may also request pre-shipment cover against certain commercial and political events which may cause the transaction to fail prior to shipment. However, this does not include cover against contract cancellation. Pre-shipment insurance cover may not be combined with an Ex-Im Direct Loan. A minimum 5% cash payment is required at contract signing or before the effective date of pre-shipment cover. If the CLS requires that a letter of credit be used for the payment, the letter of credit must be issued in order for pre-shipment cover to be in effect. Applicants may also request cover for **progress payments** if such payments are for goods and services to be delivered, see Ex-Im Bank Fact Sheet EIB01-04.

4. **PERCENTAGE OF COVER**: The cover is on **100%** of the principal and interest of the insured loan. Post default interest is covered at 100% of the original rate of interest and only if it is specified in the note. Interest is covered until the date of claim payment or 270 days after default, whichever is earlier. There is a 180 day waiting period to file claims due to commercial risk defaults other than insolvency. There is no waiting period for claims resulting from insolvency or political risk defaults.

5. **CONDITIONALITY**: Insurance is a conditional risk protection product which requires the insured to provide evidence of conformance to the insurance contract (policy) by submission of documents at the time a claim is filed. Insureds are required to report borrowers who are 60 days past due. Single sale, single shipment policies require **PAYMENT OF PREMIUM** prior to shipment. Multiple shipment and repetitive sales policies require insured exporters to pay premium by the 15th day after the end of the month in which shipment takes place. Insured bank premiums are due by the 30th day after the end of the month in which financing takes place. Claims must be filed **within 240 days** after a default.

6. **ASSIGNMENTS**: The insurance policy may be assigned by an insured exporter to a financial institution. Financial institutions receive a "documentary" assignment which provides significant protection against both a foreign debtor's default and the risk of non-conformance to the policy by the insured exporter. Insured financial institutions will receive a documentary policy providing the same type of cover as the assignment. Financial institutions may sell insured promissory notes but may not assign the proceeds of the policy.

7. **EXCLUSIONS**: Applicants and potential assignees should read the policy text, declarations, endorsements and special conditions carefully. Exclusions for policies issued to exporters, in addition to those already mentioned, typically include: loss due to the fault of the insured; product disputes unless settled in favor of the exporter; and losses insurable under American Institute of Marine Underwriter's War Risks and Strikes, Riots and Civil Commotion Clauses insurance. The documentary assignment and policy eliminate such exclusions for a financial institution.

END.

EIB form 92-48
Revised 10/01

Part 2 of 3, page 1 of 5

OMB No. 3048-0009
Expires 3/31/02

APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION APPLICATION FORM

Please type the requested information. Add pages if necessary. Processing of your application may be delayed or the application may be withdrawn if the requested information is not provided.

Also see "INSTRUCTIONS" Part 1

1. **Quotation TYPE requested.** Check applicable boxes in **both** "a" and "b."

   a) ☐ SINGLE SALE, single shipment ☐ SINGLE SALE, multiple shipments ☐ REPETITIVE SALES

   b) ☐ COMPREHENSIVE, i.e., commercial and political risks cover ☐ POLITICAL risk cover only

2. Have you applied for an Ex-Im Bank **Letter of Interest, Guarantee or Loan** for this transaction?

   ☐ No ☐ Yes, if yes, give: LI#_____ or PC#_____.

3. **STATUS of export contract.** ☐ Contract awarded to exporter ☐ Contract under negotiation ☐ Responding to bid

4. **PRE-SHIPMENT Coverage Requested.** (Complete **only** if requesting Pre-shipment Coverage)
   ☐ Yes, we want pre-shipment coverage.
   a) Reason pre-shipment coverage is requested:_____.
   b) Date contract executed or anticipated date of signing:_____.
   c) Estimated period between date of contract and final shipment date of items:_____.
   d) Attach a schedule of any progress payments made or to be made by the borrower during the pre-shipment period. ☐ Attached ☐ None

5. **REASON for seeking Ex-Im support.** You **must** check the box below which describe the rationale for support.

   ☐ Confirmed Foreign competition. The exporter is aware that foreign domiciled companies is (are) competing, or is (are) expected to compete for the sale. Provide company name, country and (if known/applicable) the supporting Export Credit Agency:

   _____.

   ☐ Presumed Foreign Competition. The exporter is aware that foreign domiciled companies manufacture comparable goods and services that are sold in the buyer's market with Export Credit Agency support available. Provide company name, country and (if known/applicable

   the supporting Export Credit Agency:_____.

   ☐ Private financing unavailable without Ex-Im Bank credit risk protection. There is limited availability of private financing (from either external or domestic sources). Indicate how financing is constrained by checking the appropriate box:
   ☐ No availability of economically viable interest rates on terms of over one to two years, or
   ☐ Financial institution lending capacity limits reached for either borrower and/or country, or see Other below.

   ☐ Other _____.

6. **PARTICIPANTS:**

   a) **Insurance BROKER.** If none, insert "*none.*"
   Broker #:
   Name of Brokerage: Phone #:
   Contact Person: Fax #: E-Mail:

   b) **APPLICANT.**
   Applicant Name: Phone #:
   Contact person: Fax #:
   Position Title: E-Mail:
   Street Address: City:
   State/Province: Zip/Postal Code: Country:
   Taxpayer ID #: Duns #: Congressional District:
   non-banks Fiscal year ended (mo. & yr.): Gross sales revenue in last fiscal year: $ # of employees:
   Standard Industrial Code of business: Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:

   ☐ Attach the **CREDIT INFORMATION Checklist, Part 3,** with required credit information on the applicant.

   Financial institution (bank) applicants check one: this application is a ☐ supplier credit or a ☐ buyer credit.

c) **LENDER.** The "lender" is the entity which extends the credit (loan) to the borrower or takes assignment of the policy proceeds.
Check if the lender is also the ☐ applicant or ☐ not yet known or complete the following:

Lender Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Zip/Postal Code: _____ Country: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____

☐ Check here if the lender wishes to be published by Ex-Im as a potential source of financing for exports.

NOTE: Assignees and lenders who are not the exporter **must** obtain an Exporter's Certificate form EBD-M-56 to submit with claims.

d) **EXPORTER.** The "exporter" is the entity which contracts with the buyer for the sale of the goods and services.
Check if the exporter is also the ☐ applicant or complete the following:

Exporter Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the exporter.

e) **SUPPLIER(S).** The "supplier(s)" is (are) the entity(ies) which produces the goods and/or performs the services to be exported.
Check if the supplier(s) is also the ☐ applicant or ☐ exporter or complete the following for each supplier:

Supplier Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the supplier.

f) **BORROWER.** The "borrower" is the entity which agrees to repay the credit (loan).

Borrower Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the borrower.

g) **GUARANTOR.** The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below if a guarantor is proposed or required.

Guarantor Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

☐ Attach the **CREDIT INFORMATION Checklist, Attachment 1,** with required credit information on the guarantor.

h) **BUYER.** The "buyer" is the entity which contracts with the exporter for the purchase of the U.S. goods and services.
Check if the buyer is also the ☐ borrower or ☐ guarantor or complete the following:

Buyer Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

i) **END-USER.** The "end-user" is the foreign entity which uses the U.S. goods and services.
Check if end-user is also the ☐ borrower or ☐ guarantor or ☐ buyer or complete the following, or insert "various" for resales and attach a description of the buyers and their location:

End-User Name: _____ Duns #: _____
Contact person: _____ Phone #: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State/Province: _____ Postal Code: _____ Country: _____

j) **RELATED PARTICIPANTS.** Attach a description of any direct or indirect ownership interest, management participation, or family relationship among any of the participants identified in a) Broker through i) End-User above, **if none insert "*none*"**: _____ , or ☐ attached.

k) **OTHER U.S., foreign or multilateral agencies.** ☐ Check if an application for support of this export transaction or related project, if any, has been filed with other U.S., foreign or multilateral agencies and explain: _____ .

7. REQUESTED AMOUNTS AND FINANCING STRUCTURE:

a) AMOUNTS:

(1)Exporter(s) Supply Contract(s)

US Content	$_____			
Eligible Foreign Content			$_____	
Shipping and Insurance	U.S. $_____	Foreign	$_____	include as US or Eligible Foreign in (2)
Ancillary Services if any	U.S. $_____	Foreign	$_____	see EBD-M-13
				include as US in (2) if approved
Local Costs if any			$_____	see EBD-M-05
U.S. and Foreign Subtotals	**U.S. $**_____	**Foreign**	**$**_____	
Total Exporter(s) Supply Contract			**$**	

(2) Financed/Insured Amount Requested

(a) US Content	$_____	
(b) Eligible Foreign Content	$_____	
(c) Net Contract Price (a plus b):	$_____	* ☐ FOB ☐ FAS ☐ CIF
(d) Less Cash Payment minimum 15% of Net Contract Price	($_____)	
(e) Subtotal **Financed/Insured Amount** (c minus d)	$_____	**
(f) Local Costs if Ex-Im Bank permits them to be included	$_____	***
(g)Total Financed/Insured Amount Requested excluding Premium:	$	

* this must correspond to the aggregate of the Net Contract Price(s) of all Exporter's Certificate(s) Part A. 1. E. related to the transaction.
** Maximum: the **lesser of 85% of** Net Contract Price **or** $10 million **or** US Content. Also, if greater than **$ 5 million,** see Part 3 no. 6.
For repetitive sales type policies this item is know as the **Credit Limit**.
*** not to exceed 15% of the Net Contract Price in 7. A. (2) (c) above.

b) PREMIUM. Check **only** one box.

☐	Premium to be included in the financing and to be paid as the shipments/disbursements occur.
☐	Premium to be included in the financing and will be paid up front.
☐	Premium not to be included in the financing; to be paid as the shipments/disbursements occur.
☐	Premium not to be included in the financing; to be paid up front.

Including the premium in the financing increases the rate. See the website Fee Calculator

c) **PAYMENT TERMS:** Unless otherwise requested, repayment of principal and interest is on a semiannual basis beginning 6 months after the starting point (maximum: 6 months for semi-annual, 3 months for quarterly, etc.).

(1) **Frequency.** At least ☐ semi-annually in _____ equal principal installments, plus interest on the declining balance.
If requesting more frequent installments, specify and explain why necessary: _____ .

(2) **Starting point.** The starting point is generally the event that marks the fulfillment of the Exporter's contractual responsibility.
☐ Shipment (single shipment) ☐ Installation ☐ Other (multiple shipments) refer to Guidelines for Starting Points EIB99-16.
Specify: _____.
(e.g., a weighted mean shipment date, last shipment date)

(3) **Shipment Period or Date.** Estimated **date of shipment**, or dates for multiple shipments, or start and end dates for repetitive sales, or completion of installation and training ***excluding*** any acceptance, retention, or warranty period: _____ .

(4) **Interest rate** to be charged: _____.

8. PURPOSE OF THE TRANSACTION.

☐ **Production.** Check if the goods and services will be used to create or expand production capacity for an **exportable product,** including agricultural commodities, and describe the product, the market for it, the current and anticipated sales level:_____.

☐ **Other** (Replacement, Production for Domestic Market, etc.)_____.

9. TRANSACTION DESCRIPTION:

a) **Description of export** goods and services, including for each export good the name, make, model, manufacturer/supplier, SIC or NAICS Code (if known), number of units, unit price and use:_____, **or**

☐ Check if providing the **Content Report** EBD-M-58. Ex-Im Bank endeavors to obtain the report at the time of application on medium term transactions for information and reporting purposes. Processing of, and the decision on, the application will not be delayed or affected by the submission or absence of the report. A **Cause Report** EBD-M-55 is requested at the end of each calendar year to describe the nature and reason for the inclusion of any goods and services with 50% or more foreign content in the good or service.

NOTE: Ex-Im Bank may not provide support for products, countries or buyers with trade sanctions imposed against them.For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201.

b) **Origin.** ☐ Check if the goods and services are **not** being shipped from the U.S. and explain_____.

☐ Check if the services are **not** being provided by U.S. personnel and explain_____.

☐ Check if assembly is **not** being provided by U.S. personnel and explain_____.

Identify the source and briefly describe any Eligible Foreign Content (see EIB99-21) including shipping and insurance if **not** providing the Content Report:_____ or

c) ☐ check if requesting foreign co- or re-insurance, see EIB99-11. Complete **and attach** the Reinsurance Questionnaire "Attachment H".

d) **Military/Security/Police.** Check, complete and attach Ex-Im's Defense Product Questionnaire EIB92-61 if :
- ☐ the borrower, guarantor, buyer or end-user ***is a*** military, security or police force, or
- ☐ the borrower, guarantor, buyer or end-user ***is associated in any*** way with a military, security or police force, or
- ☐ if ***any*** goods and services are to be ***used by*** a military, security or police force, or
- ☐ if ***any*** goods and services are ***intended for use by*** a military, security or police force, or
- ☐ if ***any*** goods and services ***are*** military, security or police articles, or
- ☐ if ***any*** goods and services have a military, security or police ***application***, or
- ☐ if ***any*** goods and services ***are listed on*** the U.S. Munitions List, Title 22, Code of Federal Regulations, Part 121.

e) ☐ **Nuclear.** Check if ***any*** goods and services are to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities.

f) ☐ **Used equipment.** Check if ***any*** goods are used. If so, complete and attach Ex-Im's Used Equipment Questionnaire EBD-M-25

g) ☐ **Livestock.** Check if the export is breeding livestock. If so, complete and attach Ex-Im's Livestock Questionnaire EIB92-62.

h) **Environmental** (see EBD-E-01). Check if the goods and services are:
- ☐ environmentally beneficial or,
- ☐ used in abatement, control or prevention of pollution, or
- ☐ used in handling toxic substances; or
- ☐ used in power generation, or
- ☐ related to a renewable energy source (check one):☐ wind ☐ hydro ☐ geothermal ☐ solar ☐ biomass, or
- ☐ if they in other ways affect the environment. Explain:_____.

EIB form 92-48
Revised 10/01

Part 2 of 3, Page 5 of 5

OMB No. 3048-0009
Expires 3/31/02

10. APPLICANT CERTIFICATIONS The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank (the Bank) that:

a) it is (**check one**):
- (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
- (2) ☐ an individual or partnership **resident in** the United States; **or**
- (3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
- (4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

c) (1) neither it nor its principals have been within the past 3 years:
- (a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
- (b) formally proposed for debarment, with a final determination still pending;
- (c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.

(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

d) it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

e) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

f) (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

g) the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature	Print Name and Title	/ / Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. See EIB form 92-48 Part 1, "Instructions" for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by: ☐ An Ex-Im Regional Office:_____

☐ An Ex-Im City/State Partner:_____ ☐ A U.S. Export Assistance Center:_____

☐ A Broker:_____ ☐ A Bank:_____

☐ A Local Development Authority:_____ ☐ Other (specify):_____

EIB form 92-48
Revised 10/01

Part 3 of 3, page 1 of 2

OMB No. 3048-0009
Expires 3/31/02

EX-IM BANK
JOBS THROUGH EXPORTS

APPLICATION FOR MEDIUM TERM EXPORT CREDIT INSURANCE QUOTATION

ATTACHMENT 1. CREDIT INFORMATION CHECKLIST

Information must be complete and current
ALL appropriate blocks must be checked.

1. **APPLICANT:**

☐ Check if not applicable because the applicant is a financial institution (bank), or
☐ Current information as described below, is on file at Ex-Im under Guarantee or Policy #_____ , or provide at a minimum a & b below:
a) ☐ Credit agency report, not older than **6 months** from date of application, **or**
☐ a check made out to "Ex-Im Bank" for $35 to acquire a report;
b) ☐ **If** Financial Statements are **not** included in the Credit Report **or**
☐ **if** the contract price is 35% or more of applicant's (exporter's, supplier's) last fiscal year total sales, attach financial statements that are not older than **1 year** from date of application;

2. **EXPORTER,** if different from the applicant:

☐ Not applicable, or
☐ Current information (described in 1. above) is on file at Ex-Im under Guarantee or Policy #_____ , or
a) ☐ , and/or b) ☐ as above.

3. **SUPPLIER,** if different from the applicant or exporter:

☐ Not applicable, or
☐ Current information (described in 1. above) is on file at Ex-Im under Guarantee or Policy #_____ , or
a) ☐ , and/or b) ☐ as above.

4. **BORROWER:**

If application is for ☐ **political only or sovereign risks** provide "4.a" only, or
If credit is based on ☐ **a guarantor** provide only "4.a" on the borrower and answer 5, or
☐ Current information as described below is on file at Ex-Im under Guarantee or Policy #_____ , or provide at a minimum a, b and c below:
a) ☐ A credit agency report not older than **6 months** from date of application, **or**
☐ Check if a credit agency report is not applicable because the borrower is a financial institution (bank) or a foreign government agency.
b) ☐ Bank reports or references from borrower's (including banks and non-sovereign government agencies) principal commercial banks, not older than **6 months** from date of application, **including** bank names, addresses, personal contacts, length of relationships, experience, amount and terms of secured and unsecured credit.
c) Financial statements as follows in 1 **or** 2:

1) ☐ For **financed amounts of up to and including $1 million**: Financial statements with notes (preferably audited with opinions and in English; financial institution, i.e., bank, statements **must** be audited) for the previous **3 fiscal year ends** plus interim statements if the latest fiscal year end statements are dated more than **9 months** from date of application. If financial statements are unaudited, they **must** be accompanied by a summary of significant accounting policies used in their preparation.

2) ☐ For **financed amounts of greater than $1 million**: Audited financial statements with notes and opinions in English for the previous **3 fiscal year ends** plus interim statements if the latest fiscal year end statements are dated more then **9 months** from date of application.

d) ☐ Market indications, if available (not required), as follows: ☐ not available

Name of rating agency:_____ Rating:_____ Date:_____

e) ☐ Spread of financial statements including ratios and cash flow (not required for transactions under $1 million).

f) Ex-Im's Medium Term Credit Standards, computed according to EBD-M-39, Attachment A, Parts I and II, transactions up to and including U.S. $5 million (not required but recommended):
1) ☐ not computed
2) ☐ are **met** and ☐ computations are attached.
3) ☐ are **not met**, but ☐ supplemental information described in EBD-M-39 is attached.
4) ☐ are not met, but ☐ **a guarantor** is provided.

EIB form 92-48
Revised 10/01

Part 3 of 3, Page 2 of 2

OMB No. 3048-0009
Expires 3/31/02

5. **GUARANTOR(S):**

☐ Not applicable [e.g., political only, sovereign, guarantor is not the primary source of repayment (PSR)], or
☐ Current information as described below is on file at Ex-Im under Guarantee or Policy #:_____, or provide at a minimum a, b and c below.

a) ☐ A credit agency report the same as in 4.a above, **or**
☐ Check if credit agency report is not applicable because the guarantor is a financial institution (bank) or a foreign government agency.

b) ☐ Bank reports or references the same as in 4.b above

c) Financial statements as follows in a **or** b:
1) ☐ For **financed amounts of up to and including $1 million** the same as in 4.c.1 above.
2) ☐ For **financed amounts of greater than $1 million** the same as in 4.c.2 above.

d) ☐ Market indications, if available (not required), as follows: ☐ not available

Name of rating agency:_____ Rating:_____ Date:_____

e) ☐ Spread of financial statements including ratios and cash flow (not required for transactions under $1 million).

f) Ex-Im's Medium Term Credit Standards, computed according to EBD-M-39, Attachment A, Parts I and II, transactions up to and including U.S. $5 million (not required but recommended):
1) ☐ not computed
2) ☐ are **met** and ☐ computations are attached.
3) ☐ are **not met**, but ☐ supplemental information as described in EBD-M-39 is attached.

6. ☐ **EBD-M-39 ATTACHMENT C** is required for transactions (i.e., financed amount excluding interest and Ex-Im premium) of greater than U.S. $5 million with non-financial institution buyers who **do not have** market indications.
☐ Not applicable. It is **not required** for transactions: of U.S.$5million or less, with financial institutions, with buyers or guarantors who have market indications, with sovereign buyers or guarantors, for political risk cover only, or with buyers or guarantors pre-approved by Ex-Im.

7. **MISCELLANEOUS items** which may be attached by the applicant (if any):

☐ Calculation of Ex-Im Medium Term Credit Standards (see 4f & 5f above)
☐ Description of end-users and countries after resale (see application 6i)
☐ Defense Product Questionnaire EIB92-61 (see application 9d)
☐ Livestock Questionnaire EIB92-62(see application 9h)
☐ Form LLL (see application 10d)
☐ Pro-forma invoice ☐ Letter of Credit
☐ Buyer/Guarantor/Government - Request for Bid, Mandate, or Contract
☐ Description of manufacture/production (see application 8)
☐ EBD-M-39 Attachment C (see 6 above)
☐ Description of related participants (see application 6j)
☐ Used Equipment QuestionnaireEBD-M-25(see application 9g)
☐ Content Report Form EBD-M-58 (see application 9a,c)
☐ Cause Report EBD-M-55
☐ Exporter or supplier product brochure
☐ Reinsurance Questionnaire "Attachment H"
☐ Other (specify):_____.

END

OMB No. 3048-0009
Expires 05/31/02

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ dba: _____
Contact: _____ Title: _____ Website: _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____
Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. How did you learn about Ex-Im Bank? ☐ Ex-Im Bank regional office ☐ Broker ☐ Bank ☐ US Export Assistance Center ☐ Ex-Im Bank City/State Partner _____ ☐ Other _____

2. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐ Yes or ☐ No
If so, please name the agency, program, outcome and status: _____
If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

3. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

4. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

5. Product and/or services to be exported: _____

6. Are the products* to be covered under the policy:
   - Manufactured in the U.S. with a minimum of 51% U.S. content (excluding mark-up)? ☐ Yes or ☐ No
   - Manufactured by the applicant? (If no, provide a list of suppliers with addresses.) ☐ Yes or ☐ No
   - Shipped from the United States to your buyers? ☐ Yes or ☐ No
   - Listed on the U.S. Munitions List (part 121 of title 22 of the Code of Federal Reg.)? ☐ No or ☐ Yes
   - Used? (If yes, please attach Used Equipment Questionnaire EBD-M-25) ☐ No or ☐ Yes

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: _____ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC): _____

	Year: _____	Year: _____
8. Total export sales for the prior 2 years:	$_____	$_____
Total export *credit* sales (exclude CIA, CILC) for the prior 2 years:	$_____	$_____

9. Buyer Types: ____% Manufacturers ____% Wholesalers/ Distributors ____% Retailers ____% End-users

10. Export Credit Portfolio - attach additional pages if necessary.

	Previous Year			Projections For Next Year		
Country	**# of Buyers**	**Sales**	**Payment Terms**	**# of Buyers**	**Sales**	**Payment Terms**
EXAMPLE: Mexico	10	$2,500,000	50% CILC 50% 60 day OA	12	$3,000,000	100% 60 day OA

OMB No. 3048-0009
Expires 05/31/02

11. Please list your 5 largest export buyers:

Buyer Name	City/Country	Last 12 Months Sales	Payment Terms	Credit Limit Needed
		$		$
		$		$
		$		$
		$		$
		$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp.

_____ _____ _____ _____

_____ _____ _____ _____

13. At what point do you stop shipping to a past due account? _____ days past due

14. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 60 days of the application)

$_____	$_____	$_____	$_____	$_____
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

YEAR	AMOUNT (US$)	EXPLANATION OF LOSS OR RESCHEDULING (SPECIFY REASON, COUNTRY, AND BUYER)
	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available).

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's.

Affiliate Company / Trade style	City / State / Country	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify):_____

_____

OMB No. 3048-0009
Expires 05/31/02

The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:
- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

OMB#3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR
EXPORT CREDIT INSURANCE UMBRELLA POLICY

(Please Print or Type)

Date:_____
App.No.:_____
(Ex-Im Bank use only)

1. Applicant Name & Address	2. Broker Name & Number
Attn.: Tel No.: Fax No.: E-Mail:	(If none, state "None") Brokerage: Broker Number: Attn.: Tel No.: Fax No.: E-Mail:

3. a. Please specify business activities:

☐ Bank
☐ EMC/ETC
☐ Insurance Broker
☐ Accounting Firm
☐ State Government Organization
☐ Trade Organization
☐ Freight Forwarder
☐ Other_____

b. Legally formed as a _____ (Type) on _____ (Date) in _____ (State)

c. Total number of permanent employees:_____

d. Number of years your organization has been involved in export related activities:_____

e. Tax ID #:_____ f. DUNS #:_____ g. Congressional District:_____

4. a. In your organization, name the individuals who will be responsible for administering the Export Credit Insurance Umbrella Policy.

Name:_____ Name:_____

Title:_____ Title:_____

5. Has your organization ever held an Export-Import Bank of the United States (Ex-Im Bank) policy or acted as a business finder, consultant, buyer or seller representative for any transaction insured under an Ex-Im Bank policy? ☐ Yes ☐ No
If yes, please give the names of the 4 most recent policyholders and the policy numbers:

Holder:_____ Number:_____

Holder:_____ Number:_____

Holder:_____ Number:_____

Holder:_____ Number:_____

6. Please list any individual/institution owning 20% or more of your organization:

7. If your organization has subsidiaries or affiliates involved in export activities, please list their names and addresses: Name Address

8. List two bank references and two business references, including officer to contact, and telephone

OMB#3048-0009
Expiry Date 5/31/02

number:

Organization	Contact	Phone Number
1)		
2)		
1)		
2)		

9. Please list the name of each exporter you anticipate will be an insured under this policy. If none are known at this time, indicate "None".

10. Does your organization currently have a fidelity bond and an errors and omissions insurance policy? (Check the appropriate box(es) if yes.)

☐ Fidelity Bond - Issuer:_____

Limits of Liability:_____

☐ Errors and Omissions Policy - Issuer:_____

Limits of Liability:_____

Issuance of an Export Credit Insurance Umbrella Policy will be contingent upon both being in force for the life of the policy

11. Please attach the following information:
   a. Financial statements for the last three years, audited if available; if not audited, signed by an officer
   b. Recent (within 6 months) credit agency report on your organization. If unavailable, please attach a check for $35.00 payable to Ex-Im Bank.
   c. Descriptive brochures or advertising materials.
   d. Resumes on individuals named in question number 4 (see Resume Form attached).
   e. Any other information that you would like to have considered when evaluating this application.
   f. Any completed Insured Exporter Applications for companies mentioned in question number 9.

12. AGREEMENTS OF THE ADMINISTRATOR

The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a. it is **(check one)**:
   1) ☐ a corporation organized and **existing under the laws of the United States,** or a jurisdiction thereunder, or
   2) ☐ an individual or partnership **resident in** the United States; **or**
   3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
   4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b. it will undertake to carry on its business with due care and in full compliance with the laws of the United States and with the state and local laws and regulations governing the area in which the applicant is resident;

c. It will conduct its business from the address listed in question number 1 of this application, and will provide notification within 10 days of any change of its business address;

d. It will provide notification within 10 days if the person responsible for administration of its Export Credit Insurance Trade Association policy and listed in question number 4a of this application change;

OMB#3048-0009
Expiry Date 5/31/02

e. It will obtain and maintain errors and omissions insurance covering the performance of its duties and responsibilities under its Export Credit Insurance Trade Association Policy.

f. 1) neither it nor its principals has been within the past 3 years:
a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
b) formally proposed for debarment, with a final determination still pending;
c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despitean inability to make certifications a through d..
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

g. it will complete and submit **Form-LLL,** Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
1) an officer or employee of any U.S. Government agency, or
2) a Member of Congress or a Member's employee, or
3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

h. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

i 1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.
3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

j. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** The applicant agrees that such representations and facts shall form the basis of and be incorporated in the Policy, if issued, and that the truth of such representations and facts and the due performance of each and every undertaking contained herein above shall be condition precedent to any liability of Ex-Im Bank thereunder. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

This document will be a material basis for the approval of any entity or person as an Administrator of the Export Credit Insurance Umbrella Policy. Any misrepresentation herein is grounds for immediate disqualification of an approved Administrator. Other information, including, but not limited to, interviews and visits to your offices, may be requested.

As an Administrator you will be administering export credit insurance coverage for various insureds and dealing directly with Ex-Im Bank on the insureds' behalf. Many states regulate, through licensing or otherwise, the persons, firms, associations and corporations which handle insurance matters for others. You may wish to review your status as an Administrator under applicable state law(s) before submitting this application for an Export Credit Insurance Umbrella Policy. If your application is approved, it will be for a one-year period only. Renewals may require additional information.

_____ _____

By (Signature) Print Name and Title

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

OMB#3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
Attachment to Umbrella Policy Application
To be filled out for each individual named in Question 4a.
RESUME FORM

Name:_____

Title or Position:_____

Number of years with your organization:_____

Full description of job functions including administering the policy:

_____

_____

_____

_____

Administrative experience:_____

_____

_____

_____

_____

Export-related experience including any previous experience with Ex-Im Bank:_____

_____

_____

_____

Educational background:_____

_____

_____

OMB #3048-0009
Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S APPLICATION FOR SHORT-TERM SINGLE-BUYER POLICY App No.:_____
(Please Print or Type) (Ex-Im Bank Use Only)

1. Applicant	2. Broker (If none, state "None")
Name: Address: Attn.: Tel No.: Fax No.: E-Mail:	Brokerage: Broker Number: Attn.: Tel No.: Fax No.: E-Mail:

3. Qualification for Coverage. Will the applicant: a) Have title to the products at the time they are shipped? ☐ Yes ☐ No
b) Be directly invoicing the Buyer? ☐ Yes ☐ No
(If you answered no to either you may not be eligible for coverage. Consult your broker, City/State Program participant or Ex-Im)

4. Buyer Name and (full) Address (no Post 0ffice Box nos.) File No.:_____
(Issuing Bank for Letter of Credit transactions) (Ex-Im Bank Use Only)

5. Guarantor Name and Address (If none, state "None") File No.:_____
(Ex-Im Bank Use Only)

PART I - INFORMATION ABOUT THE APPLICANT Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09)Exporter for New Policyholder to determine the likelihood of approval.

6. If you have submitted this information within the past twelve months provide the policy no._____; otherwise attach the following:
a) Your SIC Code (if known)_____ b) Total Employees_____ c) Total Sales_____
d) Tax ID #: _____ e) DUNS #: _____ f) Congressional District:_____
g) Indicate (Not Required) if owned by a☐ Woman, or an ☐ Ethnic Minority, describe_____
h) ☐ Credit agency report dated within 6 months of the application. If unavailable, please attach check for $35.00 to assist in covering Ex-Im Bank's cost in ordering a report.

	Year ____	____
i) Total export sales	$_____	$_____
j) Total export sales (excluding cash in advance and confirmed irrevocable letter of credit transactions) during your last 2 fiscal years:	$_____	$_____

k) Years exporting on credit terms:_____
l) ☐ Attach the collection procedures your company follows in the event your foreign customers become past due.

7. What is your primary reason for applying for this policy? ☐ Risk mitigation ☐ To obtain financing ☐ Other attach explanation.

8. Have you applied for, or received the benefit of, a U.S. Small Business Administration or Ex-Im Bank program such as a Working Capital Loan Guarantee or Insurance Policy approval? (Enhanced Assignments are not available to exporters benefitting from an Ex-Im Bank or US Small Business Administration Working Capital Loan Guarantee) ☐ No ☐ Yes (describe agency, program outcome and status):_____.

9. If requesting an "Enhanced Assignment" check here☐ and attach the following (refer to Ex-Im Bank's Short Term Credit Standards EIB99-09 Exporters for Enhanced Assignments to determine the likelihood of approval):
☐ A bank reference dated within 6 months of the application.
☐ 2 trade references dated within 6 months of the application.
☐ Financial statements as follows:

Limit of Liability	Minimum Requirement
$500,000 or less	signed by an authorized officer for the applicant
$500,001 - $999,999	reviewed by a CPA with notes attached
$1,000,000 or more	audited by a CPA with opinion and notes attached.

PART II - INFORMATION ABOUT THE TRANSACTION

10. Check one: ☐ Firm Order ☐ Negotiating Sale ☐ Responding to Invitation to Bid

11. a) Products ☐ New ☐ Used (If used, attach Used Equipment Questionnaire)
b) Name and Description of Products*:_____.
c) Is each product produced or manufactured in the United States? ☐ Yes ☐ No If no explain:_____.
d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of United States origin? ☐ Yes ☐ No If no, explain: _____.
e) Will any value be added to the product after export from the U.S.?☐No☐Yes If yes, explain: _____.

OMB #3048-0009
Expiry Date 5/31/02

f) Are products listed on the United States Munitions List? (Part 121, Title 22, Code of Federal Regulations) ☐ Yes ☐ No
g) Has this transaction been considered by any other export credit insurer? ☐ No ☐ Yes If yes, attach an explanation.

* Note: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

12. **SUPPLIER.** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #: _____)

Supplier Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

13. a) **Payment terms** requested _____
b) Debt instrument (if any) _____
c) Expected frequency of shipments: ☐ Single shipment ☐ Multiple shipments under one sales contract.
d) If single shipment, the expected date of shipment _____, or
if multiple shipments, the period required to make shipments from _____ to _____
e) Total shipment volume to be insured $ _____
f) If multiple shipments, the expected highest amount outstanding during shipment period $ _____
g) Other security/guarantees available. If none, state "None". _____.
14. Coverage type required: ☐ Commercial/Political ☐ Political Only
15. Pre-shipment Coverage (complete only if coverage is requested) **NOTE:** Additional premium will be charged for this cover.
a) Has contract of sale been executed? ☐ Yes ☐ No Date or estimated date: _____
b) Estimated period between date of contract and final shipment date of products: _____
c) ☐ Attach schedule of any progress payments made or to be made by buyer during pre-shipment period or ☐ None.
d) What risk is of primary concern to you during the pre-shipment period? _____

PART III - INFORMATION ABOUT THE BUYER Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Buyers: for Financial Institutions, letter of credit transactions, for Financial Institutions non-letter of credit transactions, and for Non-Financial Institution Buyers to determine the likelihood of approval. Attach the following information:

16. a) Market Rating: _____ Rating Agency: _____ Date: _____ **OR**
b) ☐ A credit report on the buyer, and guarantor (if any) not older than 6 months from date of application **and**
☐ 2 (1 if the credit limit is $100,000 or less) Trade Reference forms (EIB99-14) dated within 6 mos of the application **and**
☐ If the credit limit is $300,001 or more, audited or unaudited signed financial statements with notes on the buyer, and guarantor (if any) for the last: 2 fiscal years if the credit limit is $300,001 to $1million, or
3 **audited** fiscal years if the credit limit is $1,000,001 or more.
(Credit and financial information should be on the issuing bank if terms are letter of credit)
17. When did you last visit the buyer? _____
18. a) Summary of credit experience (insured and uninsured) with this buyer during current year and past 2 years:

Total Sales Each Year	$_____	$_____	$_____
Highest Amount Outstanding During Period	$_____	$_____	$_____
Payment Terms	_____	_____	_____

b) Describe buyer's payment history (check one)
☐ No prior experience ☐ Prompt/Discount ☐ 1-30days slow ☐ 31-60days slow ☐ More than 60 days slow
c) Amount now owing $ _____ as of _____ (Date).
d) Amount now past due (indicate maturity dates and explanation). _____
e) If past dues are due to foreign exchange problems, does applicant have evidence of local currency deposits on all payments due? ☐ Yes ☐ No ☐ Not applicable.
19. Describe any direct or indirect ownership interest or family relationship which exists between the applicant

OMB #3048-0009
Expiry Date 5/31/02

and the buyer or guarantor. If none, state "None." _____.

21. **PART IV The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a) it is (**check one**): (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
(2) ☐ an individual or partnership **resident in** the United States; **or**
(3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
(4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally **for use as indicated below**. When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and item (1) should be checked. If, however, it has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please complete item (2): (1) ☐ By the buyer in the country specified above. (2) ☐ If not, name the country (ies) **where** products will be principally used: _____ **by whom**: _____.

c) it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

d) (1) neither it nor its principals has been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications a through d..
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

e) it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

h) the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts.** The applicant agrees that such representations and facts shall form the basis of and be incorporated in the Policy, if issued, and that the truth of such representations and facts and the due performance of each and every undertaking contained herein above shall be condition precedent to any liability of Ex-Im Bank thereunder. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____	_____	_____
(Signature)	(Print Name and Title)	Date

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office: _____
☐ An Ex-Im City/State Partner: _____
☐ A U.S. Export Assistance Center: _____
☐ A Broker: _____
☐ A Bank: _____
☐ A Local Development Authority: _____
☐ Other (specify): _____

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER REGISTRATION FORM

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is registered with Ex-Im Bank and is appointed as broker-of-record by the policyholder either by designation on an insurance policy application or by separate letter.

Name of Brokerage:_____

Contact:_____ Title:_____

Address:_____ PO BOX:_____

City:_____ State:_____ Zip:_____

Phone: (____)_____ Fax: (____)_____ E-mail:_____

Tax ID #:_____ DUNS #:_____ No. of Employees:_____

Indicate (Not Required) if owned by a ☐ woman or ☐ an ethnic minority, describe_____.

Other lines of brokered insurance:_____.

Do you have other offices you wish to register (to be eligible for commissions)? ☐ No ☐ Yes
If "Yes", please list firm's name, address, telephone number, fax number and contact person on a separate sheet.

A list of registered insurance brokers is available on the Ex-Im Bank Internet Website and unbrokered applicants are referred to the list. Please indicate here if you **DO NOT** wish your name released. ☐

1. A Registration Fee of **$85.00** is required, for which you will also receive a copy and updates of the "Ex-Im Bank Users' Guide."
2. You are required to review, understand and **sign** the attached "Standards of Service".
3. Attach a copy of a current, valid insurance brokerage **license** indicating issuance and/or expiry date(s).
4. Forward the attached "Authorization for Automated Deposits" form.

The Broker (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank (the Bank) that:

1. a) neither it nor its principals has been within the past 3 years:
   1) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   2) formally proposed for debarment, with a final determination still pending;
   3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   4) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

   b) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.

   It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to 1, 2 or 3 above.

OMB #3048-0009 Expiry Date 5/31/02

2. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
   a) an officer or employee of any U.S. Government agency, or
   b) a Member of Congress or a Member's employee, or
   c) an officer or employee of Congress.

3. corrupt payments made in connection with Bank supported transactions may be a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC 78dd-1, et. seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business.

4. a) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
   b) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Insurance Program. The information provided will be reviewed to determine if the broker meets the Bank's legislative requirements under the program
   c) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
   d) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
   e) the Bank shall have a right to transfer to another U.S. Government authority any financial records included in this certification or other correspondence as necessary to process, service, foreclose or collect on an insured debt. No other transfer of records to private parties or another U.S. Government authority will be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
   f) the **public burden** reporting for this collection of information is estimated to average ½ hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

5. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature:_____ Print Name:_____

Title: _____ Date: _____

Send this application to Attn: Assistant Director for Broker Relations, Insurance Division, Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

OMB #3048-0009 Expiry Date 5/31/02

INSURANCE BROKERS STANDARDS OF SERVICE

1. To act in a professional, reasonable, prudent and forthright manner in all dealings with your client and Ex-Im Bank.

2. To stay knowledgeable about not only Ex-Im Bank export credit insurance but alternatives, including other Ex-Im Bank programs, other U.S. government programs, and private sector products as well, in order to provide the best options to your clients.

3. To educate your clients about Ex-Im Bank's Insurance Program and policies, its' benefits and proper usage.

4. To serve as your clients' primary contact for any questions concerning the policies and the servicing of a policy.

5. To review all applications and issuances of policies, actions under policies, renewals of policies and credit limits, and claims, for timeliness, completeness, accuracy and reasonableness.

6. To review correspondence from Ex-Im Bank with your clients, including quotes and credit limits, to assist them in understanding the coverage and their responsibilities.

7. To assist your clients to comply with the Agreements of the Insured including shipment reports, premium payment and reports of overdue accounts, and to advise Ex-Im Bank of any potential claims.

8. To report policy cancellations and submit a premium reconciliation to Ex-Im Bank.

9. To provide as much assistance to the policyholder as is possible in order to maximize the benefits of the policy.

I have read the above standards, agree that they are reasonable, and will comply with these standards.

I understand and agree that substantial failure by me to comply with these standards could result in withdrawal from the list of registered insurance brokers published by Ex-Im Bank and cancellation of eligibility for commission payments under Ex-Im Bank export credit insurance policies.

Name of Brokerage	Signature of Broker	Date

Print Name

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES

AUTHORIZATION FOR AUTOMATED DEPOSITS (ACH CREDITS)

I hereby authorize the Export-Import Bank of the United States hereinafter called Ex-Im Bank, to initiate credit entries to my [ ] **CHECKING** [ ] **SAVINGS account** ☑ ***(check one)*** indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

DEPOSITORY NAME _____

BRANCH _____

CITY _____ STATE ___ ZIP _____

TRANSIT/ABA NUMBER: | | | | | - | | | | | - | |

ACCOUNT NUMBER: _____

This authority is to remain in full force and effect until Ex-Im Bank has received written notification from me of its termination in such time and in such manner as to afford Ex-Im Bank a reasonable opportunity to act on it.

BROKER NAME _____
(please print)

BROKER NO. _____ TAX ID NUMBER _____

SIGNATURE _____ DATE _____

PLEASE ATTACH A VOIDED CHECK FOR THE ACCOUNT NAMED ABOVE

FOR EX-IM BANK USE ONLY

DATE RECEIVED _____

PROCESSED BY _____

Return to:

Export-Import Bank of the United States
Director - Broker Relations
811 Vermont Avenue, N.W.
Washington, DC 20571

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER COMMISSION SCHEDULE
FOR EXPORT CREDIT INSURANCE POLICIES

Effective: October 1, 1994

BROKER ELIGIBILITY

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is **registered** with Ex-Im Bank and is **appointed** as broker-of-record by the policyholder. The policyholder reserves the right to appoint, delete or change the broker of record at any time. Brokers of record are entitled to any commissions due on premiums paid prior to a change in the broker of record.

COMMISSION RATES

Commission rates paid by Ex-Im Bank are based on the type of policyholder to which the policy is issued, as shown in the chart below:

Type of Policyholder	Commission Rate (percentage of premium)
Financial Institutions	**8%**
Exporters	
Small Business	**30%***
Multi-Buyer Policyholders	**12%**
Single-Buyer Policyholders	**10%**
Administrators	
Umbrella Policy	**30%***
Trade Association Policy	**10%**
Lessors	
(whether a financial institution or an exporter)	
Operating Lease Policy	**20%**
Financing Lease Policy	**10%**

*At Ex-Im Bank's discretion, this percentage will increase to 40% for those brokers who meet certain criteria regarding support of small business.

COMMISSION PAYMENTS

- The full amount of all premiums are due at the appropriate lockbox on or before the date specified in the policy. Insurance brokers should not remit premiums "net" of commission.
- Commission payments will be made monthly.
- No commission payments will be made on advance premium.

BROKER CHANGES ON EXISTING POLICIES

Ex-Im Bank policyholders may appoint or change their insurance broker at any time. Insurance brokers appointed after a policy is issued will be recognized on the first day of the next month after the receipt of the policyholder's written notice appointing an insurance broker of record.

Acknowledgment by Ex-Im Bank of a policyholder's appointed insurance broker is made by means of a policy endorsement. Insurance brokers acknowledged by Ex-Im Bank are eligible for commissions with respect to transactions occurring after the effective date of the endorsement.

WHO TO CONTACT: For additional information, please contact a Regional Office or:

EXPORT-IMPORT BANK OF THE U.S., INSURANCE DIVISION
811 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20571
TEL NO (202) 565-3630 or 1-800-565-EXIM FAX NO. (202) 565-3675 INTERNET http://www.exim.gov
Regional Offices: MID ATLANTIC (202) 565-3940 MIDWEST (312) 353-8041
NORTHEAST (202) 466-2950 SOUTHEAST (305) 526-7425
SOUTHWEST (281) 721-0465 WEST: Long Beach (562) 980-4580, San Jose (415) 705-2285

[FR Doc. 02–14120 Filed 6–5–02; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

May 29, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 8, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 30 minutes (0.5 hours).

Total Annual Burden: 5,200 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR Section 76.946 states that cable operators that advertise for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures, may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. The Commission has set forth this disclosure requirement to ensure consumer awareness of all fees associated with basic service and cable programming service tier rates.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–14175 Filed 6–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council Meeting; Cancellation of Meeting.

AGENCY: Federal Communications Commission.

ACTION: Notice of cancellation of public meeting.

SUMMARY: This notice advises interested persons that the meeting of the Network Reliability and Interoperability Council scheduled for June 14, 2002 has been cancelled. The next meeting of the Network Reliability and Interoperability Council will be held in the Commission meeting room, 445 12th Street, SW., Washington, DC on Friday, September 13, from 10 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Goldthorp at 202–418–1096 or TTY 202–418–2989.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14258 Filed 6–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2554]

Petition for Reconsideration of Action in Rulemaking Proceeding

May 30, 2002.

Petition of Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by June 21, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Digital TV Table of Allotments (MM Docket No. 00–138).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14103 Filed 6–5–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, June 11, 2002 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–14330 Filed 6–4–02; 11:21 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The New Washington State Bank Employee Stock Ownership Plan, New Washington, Indiana (''ESOP''), (BHC stock voted by the trustee, Monroe County Bank Trust Department's trust officer, Scott Walters, Bloomington, Indiana; Brenda G. Bridges, Sellersburg, Indiana; Betty A. Carver, Henryville, Indiana; Rhonda K. Clapp, Memphis, Indiana; Patrick J. Glotzbach, New Albany, Indiana; Cathy L. Tinsley, Marysville, Indiana; and Max H. Zimmerman, Charlestown, Indiana) to acquire voting shares of New Independent Bancshares, Inc., New Washington, Indiana, and thereby indirectly acquire voting shares of The New Washington State Bank, New Washington, Indiana.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Shawn Leslie Devlin, Santa Rosa, California, as Trustee; to acquire additional voting shares of RCB Corporation, Sacramento, California, and thereby indirectly acquire voting shares of River City Bank, Sacramento, California.

Board of Governors of the Federal Reserve System, May 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14153 Filed 6–5–02; 8:45 am]

BILLING CODE 6210–01–S

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 July 1, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. UCB Financial Group, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United Commercial Bank (in organization), Atlanta, Georgia.

2. Southern Community Bancorp, Orlando, Florida; to acquire 100 percent of the voting shares of Southern Community Bank of South Florida, Boca Raton, Florida (in organization).

Board of Governors of the Federal Reserve System, May 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14152 Filed 6–5–02; 8:45 am]

BILLING CODE 6210–01–S

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 novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) 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 June 20, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Tennessee Central Bancshares, Inc., Parsons, Tennessee; proposes to develop, support, and sell financial software used in bank data processing applications through the acquisition of System Ventures, Inc., Parsons, Tennessee, pursuant to Section 225.28(b)(14)(i) and (ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–14154 Filed 6–05–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 27, 2002. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace level of the Martin Building. **Anyone planning to attend the meeting should register, for security purposes, no later than Tuesday, June 25 by completing the form found on-line at: http://www.federalreserve.gov/forms/cacregistration.cfm Additionally, attendees must present photo identification to enter the building.**

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Privacy Rules - Discussion of the effectiveness of the privacy rules one year after the effective date of the interagency privacy regulations.

Community Reinvestment Act - Discussion of issues identified in connection with the current review of Regulation BB, which implements the Community Reinvestment Act.

Financial Literacy - Discussion of issues raised by the Jump$tart Coalition's survey and recent research on learning techniques and the implications for design and delivery of financial literacy training.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, June 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–14205 Filed 6–5–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT) June 17, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the May 20, 2002, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 3, 2002.

Elizabeth S. Woodruff,

Secretary of the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–14278 Filed 6–3–02; 4:50 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Acting Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding a ''Resource Center for Primary Care Practice—Based Research Networks (PBRNs)''. The RFP was published in the FedBizOpps on March 28, 2002.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2 and procurement regulations, 41 CFR 106–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)''

Date: June 26, 2002.

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact David Lanier, Center for Primary Care Research, Agency for Healthcare Research and Quality, 6011 Executive Blvd, Suite 201, Rockville, Maryland, 20852, 301–594–1489.

Dated: May 30, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–14159 Filed 6–5–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–59]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessment of the Effectiveness of the Center for Disease Control and Prevention's (CDC) Guidelines for Prevention of Surgical Wound Infections—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC..

In the U.S. an estimated 31.8 million surgical procedures are performed each year. Despite advances in infection control practices, surgical technique and antisepsis, and the introduction of antimicrobial prophylaxis, surgical site infections (SSIs) remain a leading cause of healthcare-associated morbidity and mortality. An estimated 2%–5% of surgical procedures done each year are complicated by SSI. In addition, SSIs result in an additional 7.4 days of hospitalization and $400–$2,600 in healthcare costs/infection, resulting in an annual cost of $130–$845 million/year. Since the early 1980's CDC has developed and disseminated guidelines for the prevention of SSIs. However, the degree of practitioner and institutional compliance with the guideline and the impact of the CDC-recommended precautions in preventing SSIs have not been determined. The Institute of Medicine and the Healthcare Infection Control Practices Advisory Committee have strongly advised that systematic guideline evaluation be a standard component of the guideline development process.

The purpose of this project is to assess the effectiveness of CDC Guidelines to Prevent Surgical Site Infection. The objective of this study is to determine knowledge, attitudes, and practices of surgeons regarding the Guidelines.

A mail and Internet survey will be conducted among a representative sample of members of the American College of Surgeons. The survey will ask about surgical practices and opinions related to surgical site infections. Participation in the survey will be voluntary. There is no cost to the respondents other than their time.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/respondent (in hours)	Total burden (in hours)
American College of Surgeons	2134	1	30/60	1067
Total				1067

Dated: May 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–14128 Filed 6–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–30–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Public Health Performance Standards Program Local Public Health System Assessment—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

Since 1998, the CDC National Public Health Performance Standards Program has convened workgroups with the National Association of County and City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the ten Essential Services of Public Health. In the fall of 2000, CDC conducted field tests with the local public health survey instruments in the States of Hawaii, Minnesota, and Mississippi.

CDC is now proposing to implement a voluntary data collection to assess the capacity of local public health systems to deliver the Essential Public Health Services. Electronic data submission will be the method of choice. If computer technology in local jurisdictions does not support electronic submission, hard-copy survey instruments will be available. Local jurisdictions using hard-copy survey instruments will receive assistance from State or local level field coordinators for web-based data entry.

Local health departments will respond to the survey on behalf of the collective body of representatives from the local public health system. An estimated 33 percent of local health departments will complete the local instrument in year one, 30 percent in year two and 25 percent in year three. The total burden hours are estimated to be 67,200.

Data collection period	Respondents	Responses per respondent	Average burden response (in hrs.)
Year 1 ...	875	1	24
Year 2 ...	1167	1	24
Year 3 ...	875	1	24

Dated: May 29, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–14127 Filed 6–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0055]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 8, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, and 107.280 (OMB Control Number 0910–0188)—Extension

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall, by regulation, prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations (part 107, subpart E (21 CFR part 107, subpart E)) implement these statutory provisions.

Section 107.230 requires each recalling firm to: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with an FDA approved notice of recall. Section 107.240 requires the recalling firm to: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market. If manufacturers were not required to provide this information to FDA, FDA's ability to ensure that recalls are conducted properly would be greatly impaired.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.230	3	1	3	4,500	13,500
107.240	3	1	3	1,482	4,446
107.250	3	1	3	120	360
107.260	3	1	3	650	650
Total					18,956

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice. The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been three recalls in the last 3 years, or one recall annually.

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–14169 Filed 6–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Support for Small Scientific Conference Grants; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following changes to its support of Small Scientific Conferences Grant Program. The previous announcement of this program, published in the **Federal Register** of April 15, 1987 (52 FR 12257), is superseded by this announcement. This announcement will also provide new policies that apply to the FDA Scientific Conferences Grant Program. FDA views the partial support of scientific conferences as an ongoing program and may award a limited number of grants each fiscal year ranging from $1,000 to $25,000 in direct costs only per conference. This announcement is intended to be a ''Standing Program Announcement'' and will be modified in the event of further required changes to the program.

DATES: Applications will be received and reviewed quarterly during each fiscal year as follows (see table 1):

TABLE 1.

Receipt Date	Review Date	Earliest Beginning Conference Date
October 15	November 15	December 15
January 15	February 15	March 15
April 15	May 15	June 15
July 15	August 15	September 15

If the receipt date falls on a weekend or holiday it will be extended to the following workday. Applications received after the quarterly deadline date will be held for the next review cycle or returned to the applicant if time is not sufficient for FDA to conduct a review prior to the scheduled date of the proposed conference.

ADDRESSES: Applications are available from and should be submitted to: Cynthia M. Polit, Grants Management Office (HFA–520), 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7180, e-mail: cpolit@oc.fda.gov. Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. FDA is unable to receive applications via the Internet. Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application sent to NIH and not received in time for orderly processing will be deemed nonresponsive and returned to the applicant. Application forms (PHS 398) may be downloaded from the NIH Internet site at http://grants.nih.gov/grants/forms.htm.

FOR FURTHER INFORMATION CONTACT: *For information regarding the administrative and financial management aspects of this program*: Cynthia Polit (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA's authority to enter into grants and cooperative agreements is detailed under title XVII of the Public Health Service Act (42 U.S.C. 300u–1) or the Radiation Control for Health and Safety Act of 1968 (Public Law 90–602) (42 U.S.C. 263b-n). Applications submitted under this program may be subject to the requirements of Executive Order 12372. FDA's conference grant program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

FDA strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the FDA mission to protect and advance the physical and mental health of the American people.

FDA urges applicants to submit work plans that address specific objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and to improve the quality of life. Potential applicants may obtain a hard copy of ''Healthy People 2010'' objectives, vols. I and II, conference edition (B0074), for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center, P.O. Box 37366, Washington, DC 20012–7366. Each of the 28 chapters of ''Healthy People 2010'' is priced at $2 per copy. Telephone orders can be placed to the ODPHP Center on 301–468–5690. The ODPHP Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication is also available on the Internet at www.health.gov/healthypeople/. Web site viewers should proceed to ''Publications.''

II. Background

FDA recognizes the value of partially supporting scientific meetings and conferences designed to coordinate, exchange, and disseminate information when the objectives are clearly within the scope of the agency's mission. FDA's policy is to participate with other organizations to support meetings where practicable rather than provide sole support. In view of the diversity of interests among the various FDA centers/offices, and in order to provide maximum flexibility, FDA will not set rigid requirements concerning the type of scientific meetings to be supported.

III. Reporting Requirements

A final financial status report (FSR, SF269) and a final progress report or conference proceedings are required. An original and two copies of these reports must be submitted to the Grants Management Office (see **ADDRESSES**) within 90 days after the conference date. Copies of conference proceedings resulting from the meeting may be substituted for the final progress report. Failure to provide these reports in a timely manner may jeopardize future grant support or delay an award.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the support for small scientific conference grant programs of FDA, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 may also apply to this program and are implemented through the Department of Health and Human Services (DHHS) regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's single point of contact (SPOC) as early as possible to alert them to the

prospective application(s) and to receive any necessary instructions on the State's review processes. A current listing of SPOCs can be accessed at http://www.whitehouse.gov/omb/grants/spoc.html. The SPOC should send any State review process recommendations to FDA's administrative contact (see **ADDRESSES**). The due date for the State process recommendation is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

B. Eligibility

Conference grant support is available to any public or private nonprofit entity including State and local units of government, scientific and professional societies, and for-profit entities. Faith-based organizations are eligible to apply for these conference grants. For-profit entities must commit to excluding fees or profit from the conference in their request for support.

In the case of an international conference held in the United States or Canada, the U.S. component of an established international scientific professional society is the eligible applicant. In exceptional cases, where there is no U.S. component, a grant to support a specific segment of an international conference may be awarded directly to a foreign institution or international organization upon the approval of the DHHS agency head or his or her designee.

An individual is not eligible to receive grant funds in support of a conference. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards.

C. Length of Support

The length of support will be for up to 1 year from date of award.

V. Review Procedure and Criteria

All applications submitted in response to this announcement will be evaluated upon receipt for responsiveness to this request for application (RFA). Responsiveness is defined as submission of a complete application with original signatures within the required submission dates as listed in table 1 of this document. Applications found to be nonresponsive will be returned to the applicant without further consideration.

An application will be considered nonresponsive if any of the following criteria are not met: (1) If the applicant organization is ineligible, (2) if it is received in the grants management office after the specified receipt date, (3) if it is incomplete, (4) if it is illegible, (5) if it is not responsive to the criteria list below, (6) if the material presented is insufficient to permit an adequate review, and/or (7) if it exceeds the recommended threshold amount reflected in the RFA.

Responsive applications will be reviewed and evaluated for their scientific and technical merit by an ad hoc review panel composed of experts in the field using the following criteria:

1. The content/subject matter and how current and appropriate it is for FDA's mission;
2. The conference plan and how thorough, reasonable, and appropriate it is for the intended audience;
3. The experience, training, and competence of the principal investigator/director and support staff;
4. The adequacy of the facilities;
5. The reasonableness of the proposed budget given the total conference plan, program, speakers, travel, and facilities;
6. Previous experience of the organization/principal investigator.

VI. Submission Requirements

An original and two copies of a complete grant application Form PHS 398 (Rev. 4/98) or an original and two copies of PHS 5161–1 (Rev.7/00) for State and local governments should be delivered to the address listed previously (see **ADDRESSES**). State and local governments may choose to use PHS 398 application form in place of PHS 5161–1. The outside of the application package should clearly state ''Request for Conference Grant'' and must be received by the appropriate submission date listed in table 1 of this document.

VII. Letter of Intent

This is not mandatory. However, you may submit a letter of intent to the contact (see **ADDRESSES**) at least 30 days prior to the application receipt date. Potential applicants are also encouraged to talk to the contact to determine if the proposed scientific conference is clearly consistent with FDA's interest, mission, and priorities. Potential applicants may fax letters of intent to 301–827–7101.

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal business hours, from 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered on time if sent or mailed on or before the appropriate receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks will not be acceptable as proof of timely mailing. Applications received after the appropriate quarterly deadline date will be held for the next review cycle or returned to the applicant if time is not sufficient for FDA to conduct a review prior to the scheduled date of the proposed conference.

B. Format of Application

Applications must include the following:

1. Title that has the term scientific ''conference,'' ''council,'' ''workshop,'' or other similar description to assist in the identification of the request;
2. Location of the conference;
3. Expected number of registrants and type of audience expected, speaker's credentials;
4. Dates of conference (inclusive);
5. Conference format and projected agenda, including list of principal areas or topics to be addressed;
6. Physical facilities required for the conduct of the meeting (e.g., simultaneous translation facilities);
7. Justification of the conference, including the problems it intends to clarify and any developments it may stimulate;
8. Brief biographical sketches of individuals responsible for planning the conference and indication of adequate support staff;
9. Information about all related conferences held on this subject during the last 3 years (if known);
10. Details of proposed per diem/subsistence rates, transportation, printing, supplies, and facility rental costs;
11. The budget for the entire conference; budget items requested from FDA; budget items supported by other sources; and a list, including amounts, of all other anticipated support; and
12. The necessary checklist and assurance pages provided in each application package.

Allowable costs consist of: (1) Salaries in proportion to the time or effort spent directly on the conference, (2) rental of necessary equipment, (3) travel and per diem, (4) supplies needed to conduct the meeting, (5) conference services, (6) publication costs, (7) registration fees, (8) working meals where business is transacted, and (9) speaker's fees.

Nonallowable costs include but are not limited to: (1) Purchase of equipment; (2) transportation costs exceeding coach class fares; (3) visas; (4) passports; (5) entertainment; (6) tips; (7) bar charges; (8) personal telephone calls; (9) laundry charges; (10) travel or

expenses other than local mileage for local participants; (11) organization dues; (12) honoraria or other payments for the purpose of conferring distinction or communicating respect, esteem, or admiration; (13) patient care; (14) alterations or renovations; and (15) indirect costs.

Grant funds may not be used to provide general support for international scientific conferences held outside the United States or Canada. Grant funds may be awarded to a U.S. component of an international organization to provide limited support for specified segments of an international conference held outside the United States or Canada if the conference is compatible with FDA's mission. An example of such support would be a selected symposium, panel, or workshop within the conference, including the cost of planning and the cost of travel for U.S. participants for the specified segment of the scientific conference. Any Public Health Service (PHS) foreign travel restrictions that are in effect at the time of the award must be followed, including but not limited to:

1. Limitations or restrictions on countries to which travel will be supported; or

2. Budgetary or other limitations on availability of funds for foreign travel.

The collection of information requested in PHS Form 398 and its instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001. Information collection requirements requested on PHS Form 5161–1 were approved and issued under OMB Circular A–102.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–14101 Filed 6–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction and extension of time for application deadline.

SUMMARY: This notice corrects an Internet address for accessing application materials and extends the time that applications will be accepted for fiscal year 2002 competitive Cooperative Agreements for Health Workforce research that was published in the **Federal Register** on Thursday, May 23, 2002 (67 FR 36198) [FR Doc. 02–12928]. That notice announced that applications must be received by mail or delivered to the HRSA Grants Application Center by no later than June 19, 2002. The deadline for applications has been extended and applications must be received by mail or delivered to the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg Maryland, 20879, by no later than July 8, 2002. Additionally, the Internet address given in the above referenced **Federal Register** notice for accessing application materials was incorrect. The correct Internet address for accessing application materials is *hrsagac@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Richards (phone 301–443–5452 or via e-mail at *srichards@hrsa.gov*) or Louis Kuta (phone 301–443–6634 or via e-mail at *lkuta@hrsa.gov*).

Dated: May 31, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–14170 Filed 6–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 2002.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: July 10, 2002; 9 a.m.–5 p.m., July 11, 2002; 8:30 a.m.–3 p.m.

Place: Crowne Plaza Hotel, 14th and K Streets, NW., Washington, DC 20005, (202) 682–0111.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program.

Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ms. Kerry P. Nesseler, HRSA, Maternal and Child Health Bureau, telephone: (301) 443–2170.

Agenda items are subject to change as priorities are further determined.

Dated: May 31, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–14171 Filed 6–5–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Ambulance Suppliers

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance program guidance (CPG) developed by the Office of Inspector General (OIG) for the ambulance industry. Through this notice, the OIG is setting forth its general views on the value and fundamental principles of ambulance industry CPG, and the specific elements

that ambulance providers/suppliers should consider when developing a CPG initiative.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on July 22, 2002.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–415–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–415–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Sonya Castro (202) 619–2078 or Joel Schaer (202) 619–1306, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

Background

The ambulance industry has experienced a number of instances of ambulance provider and supplier fraud and abuse and has expressed interest in increasing the awareness of the industry to assist in protecting against such conduct. In response to the industry's concerns, the OIG has, to date, written several Advisory Opinions on a variety of ambulance-related issues [1] and has published final rulemaking concerning a safe harbor for ambulance restocking arrangements.[2]

In an effort to provide further guidance, the OIG published a **Federal Register** notice on August 17, 2000 (65 FR 50204) that solicited comments, recommendations and other suggestions from concerned parties and organizations on how best to develop compliance guidance for ambulance suppliers to reduce the potential for fraud and abuse. The OIG expects that final guidance will outline the most common and prevalent fraud and abuse risk areas for the ambulance industry, and provide direction on how to (1) address various risk areas; (2) prevent the occurrence of instances of fraud and abuse; and (3) develop corrective actions when those risks or instances of fraud and abuse are identified.

Public Input and Comment in Developing Final CPG

In response to our earlier solicitation notice, the OIG received 37 comments from various organizations and associations. In developing this notice for formal public comment, we have considered those specific comments as well as previous OIG issuances, such as OIG-issued Advisory Opinions, and have consulted with the Centers for Medicare and Medicaid Services and the Department of Justice.

To ensure that all parties have an opportunity to provide input, we are publishing this CPG in draft form, and welcome specific comments from all interested parties. The OIG will consider all comments that are received within the above-cited time frame, incorporate any specific recommendations, as appropriate, and prepare a final version of the CPG thereafter for publication in the **Federal Register**.

Draft Compliance Program Guidance for Ambulance Suppliers (May 2002)

I. Introduction

In keeping with the previous efforts of the Office of Inspector General (OIG) to provide guidance to various health care industry sectors on sound compliance program measures, the OIG is publishing this draft compliance program guidance (CPG) [1] for the ambulance industry and other parties that are affected by the services provided by ambulance suppliers.[2] This CPG is divided into five separate sections with an appendix:

- Section I is a brief introduction about this CPG;
- Section II provides information about the basic elements of a compliance program for ambulance suppliers;
- Section III of this document discusses various fraud and abuse and compliance risks associated with ambulance services covered under the Medicare program;
- Section IV briefly summarizes compliance risks related to Medicaid coverage for transportation services; and
- Section V discusses various risks the ambulance industry faces under the anti-kickback statute. The Appendix provides relevant statutory and regulatory citations as well as brief discussions of additional potential risk areas to consider when developing a compliance program.

The OIG is especially interested in the comments and suggestions the ambulance industry and affiliated providers may have regarding this draft CPG. The OIG recognizes that the ambulance industry is made up of entities of enormous variation: Some ambulance companies are large, many are small; some are for-profit, many are not-for-profit; some are affiliated with hospitals, many are independent; and some are operated by municipalities or counties, while others are commercially owned. Consequently, this guidance is not intended to be a one-size-fits-all guide on ambulance supplier compliance programs. Rather, like the previous OIG CPGs, this guidance is intended as a helpful tool for those entities that are considering establishing a voluntary compliance program, or for those that have already done so and are seeking to analyze, improve or expand existing programs.[3] As with the OIG's previous guidance, the guidelines discussed in this CPG are not mandatory. Nor do they represent an all-inclusive document containing all the components of a compliance program. Other OIG outreach efforts, as well as other Federal agency efforts to promote compliance, can also be used in developing a compliance guidance.

A. Scope of the Compliance Program Guidance

This guidance focuses on compliance measures related to services furnished primarily to the Medicare program, and to a limited extent, other Federal health care programs. (*See, e.g.,* section IV for a brief discussion of Medicaid

[1] See footnote 23 in section V.F. of the draft compliance program guidance.

[2] See 66 FR 62979; December 4, 2001.

[1] In its solicitation of information and recommendations for developing guidance for the ambulance industry (published in the **Federal Register** on August 17, 2000 (65 FR 50204), the OIG indicated that it expected to refer to the ambulance compliance guidance as a ''compliance risk guidance.'' After additional input and to remain consistent with the name and format of prior OIG compliance guidances, the OIG has decided to call this document a compliance program guidance.

[2] Ambulance providers are all Medicare-participating institutional providers that submit claims for Medicare ambulance services (hospitals, including critical access hospitals; skilled nursing facilities; and home health agencies). The term supplier means an entity that is other than a provider. For purposes of this document, we will refer to both ambulance suppliers and providers as ambulance suppliers.

[3] To date, the OIG has issued compliance program guidance for the following nine industry sectors: (1) Hospitals; (2) clinical laboratories; (3) home health agencies; (4) durable medical equipment suppliers; (5) third-party medical billing companies; (6) hospices; (7) Medicare+Choice organizations offering coordinated care plans; (8) nursing facilities; and (9) individual and small group physician practices. The guidances listed here and referenced in this document are available on the OIG website at www.oig.hhs.gov in the Fraud Prevention and Detection section.

ambulance coverage.) Issues related to private payor claims and services covered by private payors may also be covered by an ambulance supplier compliance program if the supplier so desires.

B. Basic Elements of a Compliance Program

While information and guidance furnished in this CPG may form the basic framework for developing a compliance program, this guidance is not by itself a compliance program. The basic components that have become accepted as the building blocks of an effective compliance program are: (1) Developing compliance policies and procedures; (2) designating a compliance officer or contact person(s); (3) conducting appropriate training and education; (4) conducting internal monitoring and reviews; (5) responding appropriately to detected offenses and developing corrective actions; (6) developing open lines of communication; and (7) enforcing disciplinary standards through well-publicized guidelines. The components of a compliance program are briefly discussed below with a more in-depth discussion in section II of this CPG.

1. Development of Compliance Policies and Procedures

The ambulance supplier should develop and distribute written standards of conduct, as well as written policies and procedures, which promote the ambulance supplier's commitment to compliance and address specific areas of potential fraud or abuse. These written policies and procedures should be reviewed periodically (*e.g.,* annually) and revised as appropriate to ensure they are current and relevant. (See section II.A.1 of this CPG for a more in-depth discussion of the development of policies and procedures.)

2. Designation of a Compliance Officer

The ambulance supplier should designate a compliance officer and other appropriate bodies (*e.g.,* a compliance committee) charged with the responsibility for operating and monitoring the organization's compliance program. The compliance officer should be a high-level individual in the organization who reports directly to upper management, such as the chief executive officer or Board of Directors. The OIG recognizes that an ambulance supplier may tailor the job functions of a compliance officer position by taking into account the size and structure of the organization, existing reporting lines, and other appropriate factors.

3. Education and Training Programs

Compliance programs must include as a key element the regular training and education of employees and other appropriate individuals. Training content should be tailored appropriately and should be delivered in a way that will maximize the chances that the information will be understood by the target audience. This CPG discusses training in more detail in section II.A.2.

4. Internal Monitoring and Reviews

Ambulance suppliers should develop and use appropriate monitoring methods to detect and identify problems, and to help reduce the future likelihood of problems. Claims and system reviews are a common internal monitoring method and are discussed in greater detail in section II.A.3 of this CPG.

5. Responding Appropriately to Detected Misconduct

Ambulance suppliers should develop policies and procedures directed at ensuring that the organization responds appropriately to detected offenses, including the initiation of appropriate corrective action. An organization's response to detected misconduct will vary based on the facts and circumstances of the offense. However, the response should always be appropriate to resolve and correct the situation in a timely manner. The organization's compliance officer, and legal counsel in some circumstances, should be involved in situations when serious misconduct is identified.

6. Developing Open Lines of Communication

Ambulance suppliers should create and maintain a process, such as a hotline or other reporting system, to receive and process complaints and to ensure effective lines of communication between the compliance officer and all employees. Further, procedures should be adopted to protect the anonymity of complainants, where the complainant desires to remain anonymous, and to protect whistleblowers from retaliation.

7. Enforcing Disciplinary Standards Through Well-Publicized Guidelines

Ambulance suppliers should develop policies and procedures to ensure that there are appropriate disciplinary mechanisms and standards that are applied in an appropriate and consistent manner. These policies and standards should address situations in which employees or contractors violate, whether intentionally or negligently, internal compliance policies, applicable statutes, regulations, or other Federal health care program requirements.[4]

Developing and implementing a compliance program may require significant resources and time. An individual ambulance supplier is best situated to tailor compliance measures to its own organizational structure and financial capabilities. In addition, compliance programs should be reviewed periodically to account for changes in the health care industry, Federal health care statutes and regulations, relevant payment policies and procedures, and identified risks.

Accordingly, the OIG has attempted to take into consideration the Centers for Medicare and Medicaid Services' (CMS) recent adoption of the fee schedule for payment of ambulance services. The CMS's ambulance fee schedule is the product of a negotiated rulemaking process and will replace the current retrospective, reasonable cost reimbursement system for providers and the reasonable charge system for suppliers of ambulance services.[5] As appropriate, the OIG may update or supplement this CPG to address new identified risk areas following the implementation of the ambulance fee schedule.

II. Elements of a Compliance Program for Ambulance Suppliers

Like other sectors of the health care industry, most ambulance suppliers are honest suppliers trying to deliver quality ambulance transportation services. However, like other health care industry sectors, the ambulance industry has seen its share of fraudulent and abusive practices. The OIG has reported and pursued a number of different fraudulent practices in the ambulance transport field involving, among others:

- Situations when individuals had other acceptable means of transportation;
- Medically unnecessary trips;

[4] The term ''Federal health care programs'' is applied in this CPG as defined in 42 U.S.C. 1320a–7b(f), which includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (*i.e.,* through programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Workers' Compensation Act) and any State health plan (*e.g.,* Medicaid, or a program receiving funds from block grants for social services or child health services). Also, for purposes of this CPG, the term ''Federal health care program requirements'' refers to statutes, regulations, rules, requirements, directives, and instructions governing the Medicare and other Federal health care programs.

[5] The CMS's final ambulance fee schedule was published in the **Federal Register** on February 27, 2002 (67 FR 9100) and went into effect on April 1, 2002.

- Submission of excessive claims;
- Trips were claimed but not rendered;
- Misrepresentation of the transport destination to make it appear as if the transport was covered;
- False documentation;
- Billing for each patient transported in a group as if he/she was transported separately; and
- Upcoding from basic life support to advanced life support services.

To help reduce the incidence and prevalence of fraudulent or abusive conduct, an ambulance supplier should consider the following guidance and adapt the OIG's suggestions to conform with any unique ambulance supplier elements.

A. Evaluation and Risk Analysis

It is prudent for ambulance suppliers conducting a risk analysis to begin by performing an evaluation of internal operations as well as factors that affect such operations (*e.g.,* Federal health care program requirements). In many cases, such evaluation will result either in the creation and adoption of written policies and procedures or the revision thereof. The evaluation process may be simple and straightforward or it may be fairly complex and involved. For example, an evaluation of whether an ambulance supplier's existing written policies and procedures accurately reflect current Federal health care program requirements is straightforward. However, an evaluation of whether an ambulance supplier's actual practices conform to its policies and procedures may be more complex and require several analytical evaluations to determine whether system weaknesses are present. Even more complex is an evaluation of an ambulance supplier's practices when there are no pre-existing written policies and procedures and the subsequent analysis of whether the particular supplier's practices comply with applicable statutes, regulations, and other program requirements.

The evaluation process should furnish ambulance suppliers with a snapshot of their strengths and weaknesses and thus assist providers in recognizing areas of potential risk. We suggest that ambulance suppliers evaluate a variety of practices and factors, including their policies and procedures, employee training and education, employee knowledge and understanding, claims submission process, coding and billing, accounts receivable management, documentation practices, management structure, employee turnover, contractual arrangements, changes in reimbursement policies, and payor expectations.

1. Policies and Procedures

Because policies and procedures represent the written standard for daily operations, an ambulance supplier's policies and procedures should describe the normal operations of an ambulance supplier and the applicable rules and regulations. Further, written policies and procedures should go through a formal approval process within the organization and should be evaluated on a routine basis, and updated as needed, to reflect current ambulance practices (assuming these practices are appropriate and comport with the relevant statutes, regulations, and program requirements). In addition, ambulance suppliers should review policies and procedures to ensure that they are representative of actual practices. For example, an ambulance supplier's policy for reviewing ambulance call reports (ACR) should not state that it will review 100 percent of its ACRs, unless the ambulance supplier is capable of performing and enforcing such comprehensive reviews. If certain policies and practices become genuinely impractical, we recommend that such policies and procedures be updated to reflect alternative, acceptable practices that conform to legal and regulatory requirements.

2. Training and Education

Ensuring that a supplier's employees and agents receive adequate education and training is essential to minimizing risk. Employees should clearly understand what is expected of them, and for what they will be held accountable. Suppliers should also document and track the training they provide to employees and pertinent personnel.

An ambulance supplier should consider offering two types of compliance training: compliance program training and job-specific training. If an ambulance supplier is implementing a formal compliance program, employees should be trained on the elements of the program, the importance of the program to the organization, the purpose and goals of the program, what the program means for each individual, and the key individuals responsible for ensuring that the program is operating successfully. Compliance program education should be available to all employees, even those whose job functions are not directly related to billing or patient care.

Ambulance suppliers should also train employees on specific areas with regard to their particular job positions and responsibilities, whether or not as part of a formal compliance plan. The intensity and the nature of the specific training will vary by employee type. Training employees on the job functions of other people in the organization may also be an effective training tool. Such appropriate cross-training improves employees' overall awareness of compliance and job functions, thereby increasing the likelihood that an individual employee will recognize non-compliance. Training should be provided on a periodic basis to keep employees current on ambulance supplier requirements, including, for example, the latest payor requirements. Ambulance suppliers should conduct or make available training for employees at least yearly and more often as needed.

Generally, employees who attend interactive training better comprehend the material presented. Interactive training offers employees the chance to ask questions and receive feedback. When possible, ambulance suppliers should use ''real'' examples of compliance pitfalls provided by personnel with ''real life'' experience, such as emergency medical technicians and paramedics.

The OIG is cognizant that offering interactive, live training often requires significant personnel and time commitments. As appropriate, ambulance suppliers may wish to consider seeking, developing, or using other innovative training methods. Computer or internet modules may be an effective means of training if employees have access to such technology and if a system is developed to allow employees to ask questions. The OIG cannot endorse any commercial training product—it is up to each ambulance supplier to determine if the training methods and products are effective and appropriate.

Whatever form of training ambulance suppliers provide, the OIG also recommends that employees complete a post compliance training test or questionnaire to verify comprehension of the material presented. This will allow a supplier to assess the effectiveness and quality of its training materials and techniques. Additionally, training materials should be updated as appropriate and presented in a manner that is understandable by the average trainee. Finally, the OIG suggests that the employees' attendance at, and completion of, training be tracked and appropriate documentation maintained.

3. Assessment of Claims Submission Process

Ambulance suppliers should conduct periodic claims reviews to verify that a claim ready for submission, or one that has been submitted and paid, contains the required, accurate, and truthful information required by the payor. An ambulance claims review should focus, at a minimum, on the documentation present in the ACR, the medical necessity of the transport as determined by payor requirements, the coding of the claim, the co-payment collection process, and the subsequent payor reimbursement. The claims reviews should be conducted by individuals with experience in coding and billing and they should be familiar with the different payors' coverage and reimbursement requirements for ambulance services. The reviewers should be independent and objective in their approach. Claims reviewers who analyze claims that they themselves prepared or supervised often lack sufficient independence to accurately evaluate the claims submissions process and the accuracy of individual claims. Additionally, the appearance of a lack of independence may also hinder the effectiveness of a claims review.

Depending on the purpose and scope of a claims review, there are a variety of ways to conduct the review. The claims review may focus on particular areas of interest (*i.e.,* coding accuracy) or it may include all aspects of the claims submission and payment process. The universe [6] from which the claims are selected will comprise the area of focus for the review. Once the universe of claims has been identified, an acceptable number of claims should be randomly selected. Because the universe of claims will vary as will the variability of items in the universe, the OIG cannot specify a generally acceptable number of claims for purposes of a claims review. However, the number of claims sampled and reviewed should sufficiently ensure that the results are representative of the universe of claims from which the sample was pulled.

Ambulance suppliers should not only monitor identified errors, but also evaluate the source or cause of the errors. For example, an ambulance supplier may identify through a review a certain claims error rate. Upon further evaluation, the ambulance supplier may determine that the errors were a result of inadequate documentation. Further evaluation may reveal that the documentation deficiencies involve a limited number of individuals who work on a specific shift. It is the ambulance supplier's responsibility to identify such weaknesses and to promptly correct them. In this example, at a minimum, additional employee training would be required along with the repayment of any identified overpayment. Such a detailed and logical process of analysis will make claims reviews useful tools for identifying risks, correcting weaknesses, and preventing future occurrences of errors.

Ambulance suppliers should also consider using a baseline audit to develop a benchmark from which to measure performance. This audit will establish a consistent methodology for selecting and examining records in future audits. It is helpful to chart and track the results of each of the audits to document progress. The results of each subsequent audit will indicate whether further actions are appropriate. Comparing audit results from different audits will generally yield useful results only when the audits analyze the same or similar information and when matching methodologies are used. For example, results of audits of a supplier's compliance with the physician certification statement requirements for non-emergency transports and a supplier's compliance with ambulance and vehicle licensure cannot be readily compared. The trending information may need to be broken out and separately analyzed to track compliance.

As part of its compliance efforts, an ambulance supplier should document (i) how often audits or reviews are conducted and (ii) the information reviewed for each audit. In addition, the results of such reviews should be compared to previous findings to determine if a problem persists or if the supplier's corrective actions are working. The ambulance supplier should not only use internal benchmarks, but should utilize external information, if available, to establish benchmarks (*e.g.*, data from other ambulance suppliers, associations, or from carriers). Additionally, risk areas may be identified from the results of the audits.

If, as a result of the audit, a material deficiency is identified that could be a potential criminal, civil, or administrative violation, the ambulance supplier may disclose the matter to the OIG via the Provider Self-Disclosure Protocol.[7] The Provider Self-Disclosure Protocol was designed to allow providers/suppliers to disclose voluntarily potential violations in their dealings with the Federal health care programs.

a. Pre-Billing Review of Claims

As a general matter, ambulance suppliers should review claims on a pre-billing basis to identify errors before claims are submitted. If there is insufficient documentation to support the claim, the claim should not be submitted for payment until it is determined by a responsible person within the organization that the appropriate, adequate documentation exists to support the claim. Pre-billing reviews also allow suppliers to review the medical necessity of their claims before they are submitted for reimbursement. If, as a result of the pre-billing claims review process, a pattern of claim submission or coding errors is identified, the ambulance supplier should develop a responsive action plan (see section II.C), which would include a plan to ensure that overpayments are identified and repaid.

b. Paid Claims

In addition to a pre-billing review, a review of paid claims may be necessary to determine error rates and quantify overpayments and/or underpayments. The post-payment review may help ambulance suppliers in identifying billing or coding software system problems. Any overpayments identified from the review should be promptly returned to the appropriate payor in accordance with payor policies.

c. Claims Denials

Ambulance suppliers periodically should review their claims denials from payors to determine if denial patterns exist. If a pattern of claims denials is detected, the patterns should be evaluated to determine the cause and appropriate course of action. Employee education regarding proper

[6] The term ''universe'' is referred to in this CPG to mean the generally accepted definition used when performing a statistical analysis. Specifically, the term ''universe'' means the total number of sampling units from which the sample was selected.

[7] The OIG encourages that providers/suppliers police themselves, correct underlying problems, and work with the Government to resolve any problematic practices. The OIG's Provider Self-Disclosure Protocol, published in the **Federal Register** on October 30, 1998 (63 FR 58399), sets forth the steps, including a detailed audit methodology, that may be undertaken if suppliers wish to work openly and cooperatively with the OIG. The Provider Self-Disclosure Protocol is open to all health care providers and other entities and is intended to facilitate the resolution of matters that, in the provider's reasonable assessment, may potentially violate Federal criminal, civil, or administrative laws. The Provider Self-Disclosure Protocol is not intended to resolve simple mistakes or overpayment problems. The OIG's Self-Disclosure Protocol can be found on the OIG web site at www.oig.hhs.gov.

documentation, coding, or medical necessity may be appropriate. If an ambulance supplier believes its carrier or payor is not adequately explaining the basis for its denials, the ambulance supplier should seek clarification in writing.

4. System Reviews and Safeguards

Periodic review and testing of a supplier's coding and billing systems are also essential to detect system weaknesses. One reliable systems review method is to analyze in detail the entire process by which a claim is generated, including how a transport is documented and by whom, how that information is entered into the supplier's automated system (if any), coding and medical necessity determination protocols, billing system processes and controls, including any edits or data entry limitations, and finally the claims generation, submission, and subsequent payment tracking processes. A weakness or deficiency in any part of the supplier's system can lead to improper claims, undetected overpayments, or failure to detect system defects.

Each ambulance supplier should have computer or other system edits to ensure that minimum data requirements are met. For example, documentation of ambulance transports must now indicate the point of pick-up of the beneficiary. Under CMS's new fee schedule for ambulance services, each transport claim that does not have an originating zip code listed should be ''flagged'' by the system. Other edits should be established to detect improper claims, such as emergency codes used when the destination is something other than an emergency room. A systems review is especially important when documentation or billing requirements are modified or when an ambulance supplier changes its billing software or claims vendors. As appropriate, ambulance suppliers should communicate with their carrier when they are implementing significant changes to their system to alert the carrier to any unexpected delays, or increases or decreases in claims submissions.

Ambulance suppliers have the responsibility of ensuring that their electronic or computer billing systems are not automatically inserting information that is not supported by the documentation of the medical or trip sheets (*e.g.,* whether physician signature was obtained). Billing systems targeting optimum efficiency may be set with defaults to indicate, for example, that a physician's signature was obtained following an emergency room transport. Conversely, if information is automatically inserted onto a claim submitted for reimbursement, and that information is false, the ambulance supplier's claims will be false. If a required field on a claim form is missing information, the system should flag such a claim prior to its submission.

5. Sanctioned Suppliers

Federal law prohibits Medicare payment for services furnished by an excluded individual, such as an excluded ambulance crew-member. Accordingly, with respect to its existing employees and contractors, ambulance suppliers should periodically (at least yearly) check the OIG's and General Services Administration's (GSA) web sites to ensure that they do not employ or contract with individuals or entities that have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs. Additionally, ambulance suppliers should query the OIG and GSA exclusion and debarments lists before they employ or contract with new employees and new contractors. The OIG and GSA websites are listed at www.oig.hhs.gov and www.arnet.gov/epls respectively, and contain specific instructions for searching the exclusion and debarment databases.[8]

B. Identification of Risks

This ambulance CPG discusses many of the areas that the ambulance industry, the OIG, and CMS have identified as common risks for many ambulance suppliers. Apart from the risks identified in this CPG, ambulance suppliers of all types (*e.g.,* small, large, rural, emergency, non-emergency) should identify if they have any unique risks attendant to their business relationships or processes. An ambulance supplier may have certain unique characteristics that will affect its risk areas. For example, small, rural not-for-profit ambulance suppliers may identify risk areas different from those of a large, for-profit ambulance chain that competes with multiple other ambulance suppliers. This CPG may not identify or discuss all risks that an ambulance supplier may itself identify. Moreover, the CPG may ascribe more or less risk to a particular practice area than an ambulance supplier would encounter based on its own internal findings and circumstances. Because there are many different types of risk areas, ambulance suppliers should prioritize their identified risks to ensure that the various areas are addressed appropriately.

To stay abreast of risks affecting the ambulance and other health care industries, the OIG recommends that ambulance suppliers review OIG publications regarding ambulance services, including OIG Advisory Opinions, OIG Fraud Alerts, Office of Evaluations and Inspections (OEI) reports, and Office of Audit Services (OAS) reports, all located on the OIG's web site at www.oig.hhs.gov. A review of industry specific trade publications will also help ambulance suppliers stay current on the industry changes. Ambulance suppliers, like others in the health care industry, should devote the necessary resources to ensure compliance with relevant requirements. Effective internal controls will help to prevent or reduce instances of mistakes, errors, fraud and/or abuse.

C. Response to Identified Risks

Following an ambulance supplier's process of evaluation and identification of its risks, a reasonable response should be developed to address appropriately identified risk areas. Determining how identified problems respond to corrective actions may require continual oversight. However, developing timely and appropriate responsive actions demonstrates to an ambulance supplier's employees and other interested parties (*e.g.,* payors, the OIG, etc.) its level of commitment to address problems and concerns.

Ambulance suppliers should develop protocols and reasonable timeframes for responding to identified problems. Ambulance suppliers can identify in advance and through a written protocol how certain situations will be addressed, including the internal reporting obligations and involvement, if appropriate, of legal counsel. Such response protocols should include a monitoring process by which the issue will be revisited on an as needed basis.

III. Specific Fraud and Abuse Risks Associated with Medicare Ambulance Coverage and Reimbursement Requirements

Ambulance suppliers should, at a minimum, review and understand applicable ambulance coverage requirements. Ambulance suppliers that are not complying with applicable requirements should take appropriate prompt corrective action to follow the

[8] Ambulance suppliers should read the OIG's September 1999 Special Advisory Bulletin, entitled ''The Effect of Exclusion From Participation in the Federal Health Care Programs,'' published in the **Federal Register** on October 7,1999 (64 FR 58851) and is located at www.oig.hhs.gov/frdalrt, for more information regarding excluded individuals and entities and the effect of employing such individuals or entities.

standards set forth. The new Medicare ambulance fee schedule covers seven levels of service including Basic Life Support (BLS), Advanced Life Support, Level 1 (ALS1), Advanced Life Support, Level 2 (ALS2), Specialty Care Transport, Paramedic ALS Intercept, Fixed Wing Air Ambulance, and Rotary Wing Air Ambulance.[9] Generally, Medicare Part B covers ambulance transports if applicable vehicle and staff requirements, medical necessity requirements, billing and reporting requirements, and origin and destination requirements are met. Medicare Part B will not pay for ambulance services if Part A has paid directly or indirectly for the same services (*e.g.,* a transport from a skilled nursing facility to a hospital).

A. Medical Necessity

There have been a number of transportation fraud cases against the Medicare and Medicaid programs involving medically unnecessary transport. Consequently, medical necessity is a risk area that should be addressed in an ambulance supplier's compliance program. Medicare Part B covers ambulance services only if the beneficiary's medical condition contraindicates another means of transportation. The medical necessity requirements vary depending on the status of the ambulance transport (i.e., emergency transport vs. non-emergency transport). If the medical necessity requirement is met, Medicare Part B covers ambulance services when a beneficiary is transported:

- To a hospital, a critical access hospital (CAH), or a skilled nursing facility (SNF) from anywhere, including another acute care facility or SNF;
- To his or her home from a hospital, CAH, or SNF; or
- Round trip from a hospital, CAH, or SNF to an outside supplier to receive medically necessary therapeutic or diagnostic services.

1. Upcoding

Notwithstanding local or state ordinance requirements regarding ambulance staffing and all-ALS mandated services,[10] ambulance suppliers should use caution to bill, at the appropriate level, for services actually provided. The Federal Government has prosecuted a number of ambulance cases involving upcoding from BLS to ALS related to both emergency and non-emergency transports. In 1999, for example, an OIG investigation determined that an ambulance supplier was not only billing for ALS services when BLS services were provided, but the ambulance supplier did not employ an ALS certified individual to perform the necessary ALS services. This supplier paid civil penalties and signed a 5-year Corporate Integrity Agreement (CIA).

2. Non-Emergency Transports

There have also been a number of Medicare fraud cases involving (i) non-emergency transports to non-covered destinations and (ii) transports that were not medically necessary. An OIG OEI report[11] issued in December 1998 found that a high number of non-emergency transports for which Medicare claims were submitted were medically unnecessary as defined by Medicare's criteria.[12] The report indicated, for example, that certain surveyed patients had been sitting unaided in a chair the day of and the day after the ambulance transport. Another patient was found sitting in a wheelchair when the ambulance arrived and refused assistance to get back to bed. These patients did not meet the Medicare coverage criteria for non-emergency transports and could have been transported by means other than by ambulance.

In addition, an August 2001 report[13] conducted by the OIG's OAS at the request of a Medicare Part B carrier, determined that an ambulance supplier received significant overpayments. For example, of the 100 trip sheets reviewed by the OIG, 99 of the trip sheets did not indicate whether the beneficiary was bed-confined.

There are instances when an ambulance supplier receives a call for assistance or transport of a patient who does not meet the medical necessity requirements. Due to various patient care and liability reasons, ambulance suppliers often transport patients who do not appear to meet Medicare's non-emergency medical necessity requirements. If an ambulance supplier determines that a transport is not covered by Medicare, the ambulance supplier should attempt to obtain a signed Advanced Beneficiary Notice (ABN) from the Medicare beneficiary. As part of the ABN process, the ambulance supplier should explain to the beneficiary that the service may not be covered by Medicare, in which case the patient will be responsible for payment of the transport and other non-covered services.

Under no circumstances should ambulance suppliers intentionally mischaracterize the condition of the patient at the time of transport in an effort to claim inappropriately that the transport was medically necessary under Medicare coverage requirements. In instances where it is not clear whether the service will be covered by Medicare, the ambulance provider should nonetheless appropriately document the condition of the patient and maintain records of the transport.

Scheduled and Unscheduled Transports

Because of the potential for abuse in the area of non-emergency transports, Medicare has criteria for the coverage of non-emergency scheduled and unscheduled ambulance transports. For example, physician certification statements (PCS) should be obtained by an ambulance supplier to verify that the transport was medically necessary.[14] The PCSs should provide adequate information on the transport provided for each individual beneficiary and each PCS must be signed by an appropriate physician or other appropriate health care professional.[15] Pre-signed and/or mass produced PCSs are not acceptable because they increase the opportunity for abuse.

Medicare does not cover transports for routine doctor and dialysis appointments when beneficiaries do not meet the Medicare medical necessity requirements. For example, Medicare does not normally pay for non-emergency scheduled or unscheduled ambulance transportation to a physician's office from a personal residence or nursing facility when a

[9] The Negotiated Rulemaking Committee on the Medicare Ambulance Services Fee Schedule used the National EMS Education and Practice Blueprint as the basis for defining the levels of ambulance service.

[10] Payment for ALS transports provided at the BLS level will be phased in over CMS's ambulance fee schedule transition period.

[11] OIG Report, OEI–09–95–00412 is available on the OIG's web site at www.oig.hhs.gov/oei.

[12] Medicare's ambulance fee schedule identifies non-emergency transport as appropriate if the beneficiary is bed confined and it is documented that the beneficiary's medical condition is such that other methods of transportation are contraindicated, or if his or her medical condition, regardless of bed-confinement, is such that transportation by ambulance is medically required. In determining whether a beneficiary is bed-confined, the following criterial must be met: (1) The beneficiary is unable to get up from bed without assistance; (2) the beneficiary is unable to ambulate; and (3) the beneficiary is unable to sit in a chair or wheelchair. 42 CFR 410.40(d).

[13] August 20, 2001, OIG Report, A–03–01–00001 is available on the OIG's web site at www.oig.hhs.gov/oas.

[14] CMS (formerly the Health Care Financing Administration (HCFA)) Program Memorandum B–00–09 describes different options for ambulance suppliers having difficulty obtaining PCSs. *See* 42 CFR 410.40(d)(3)(iii), (iv). For beneficiaries not under the direct care of a physician, whether they reside at home or in a facility, a PCS is not required. Id. § 410.40(d)(3)(ii).

[15] 42 CFR 410.40(d).

patient is able to ambulate. Similarly, ambulance services that are rendered for convenience or because other methods of more appropriate transportation are not available, do not meet Medicare's medical necessity requirements and claims for such services should not be submitted to Medicare for payment. For example, an ambulance provider was required to pay over $1 million dollars to the Federal Government and enter into a CIA with the OIG for billing for medically unnecessary ambulance trips and for non-covered ambulance trips to doctors' offices.

B. Documentation, Billing, and Reporting Risks

Currently, the HCFA 1491 or 1500 forms are the approved forms for requesting Medicare payment for ambulance services. Inadequate or faulty documentation is a key risk area for ambulance suppliers. The compilation of correct and accurate documentation (whether electronic or hard copy) is generally the responsibility of all the ambulance personnel, including the dispatcher who receives a request for transportation, the personnel transporting the patient, and the coders and billers submitting claims for reimbursement. When documenting a service, ambulance personnel should not make assumptions or inferences to compensate for a lack of information or contradictory information on a trip sheet, ACR, or other medical source documents.[16]

To ensure that adequate and appropriate information is documented, an ambulance supplier should gather and record, at a minimum, the following:

- Dispatch instructions, if any;
- Reasons why transportation by other means was contraindicated;
- Reasons for selecting the level of service;
- Information on the bed-confined status of the individual;
- Who ordered the trip;
- Time spent on the trip;
- Dispatch, arrival at scene, and destination times;
- Mileage traveled;
- Pick up and destination codes;
- Appropriate zip codes; and
- Services provided, including drugs or supplies.

1. HCPCS and Diagnosis Code Selection

The appropriate diagnosis and procedure codes (*e.g.,* ICD–9, HCPCS/CPT) should be used when submitting claims for reimbursement. The codes reported on the ambulance trip sheets or claim forms should be selected to describe most accurately the illness, injury, signs or symptoms associated with the patient and transport. Although ICD–9 codes are universally known as diagnosis codes, coders use them to describe signs and symptoms.[17] Coders are taught that the patient's condition should be coded to the highest level of certainty and specificity. Diagnostic code information should not be based on past medical history or prior conditions, unless such information also specifically relates to the patient's condition at the time of transport.

False or uncertain diagnoses should never be added to the trip sheets or claims to justify reimbursement. If there is a question on the proper code to use when coding from the trip sheet or preparing a bill that cannot be appropriately resolved within the organization's proper chain of command, the ambulance supplier should seek guidance, in writing, from its local carrier. In addition to obtaining written guidance, ambulance suppliers should maintain documentation of communication with its carrier. If the ambulance supplier experiences difficulty in obtaining clarification, it should submit with the claim a narrative explaining the issue and the basis for the selected choice. Copies of any carrier correspondence should be appropriately maintained by the ambulance supplier.

2. Origin/Destination Requirements—Loaded Miles[18]

Medicare only covers transports for the time that the patient is physically in the ambulance. Effective January 1, 2001, ambulance suppliers must furnish the ''point of pick-up'' zip code on each ambulance claim form.[19] Under the new Medicare ambulance fee schedule, the point of pick-up will determine the mileage payment rate as well as whether a rural adjustment factor will be applied to the base rate. The ambulance supplier should document the address of the point of pick-up to verify that the zip code is accurate.

The ambulance crew should accurately report the mileage traveled from the point of pick-up to the destination. Medicare covers ambulance transports to the nearest available treatment facility. If the nearest facility is not appropriate (*e.g.,* because of traffic patterns or lack of equipment), the beneficiary should be taken to the next closest and appropriate facility. If a beneficiary requests a transport to a facility other than the nearest appropriate facility, the ambulance supplier should inform the patient that he or she may be responsible for payment of the additional mileage incurred.

3. Multiple Payors—Coordination of Benefits

Ambulance suppliers should make every attempt to determine whether Medicare, Medicaid, or other Federal health care programs should be billed as the primary or as the secondary insurance. Claims for payment should not be submitted to more than one payor, except for purposes of coordinating benefits (*e.g.,* Medicare as secondary payer). Section 1862(b)(6) of the Social Security Act (42 U.S.C. 1395y(b)(6)) states that an entity that knowingly, willfully, and repeatedly fails to provide accurate information relating to the availability of other health benefit plans shall be subject to a civil monetary penalty (CMP).

The OIG recognizes, particularly for ambulance suppliers that may have incomplete insurance information from a transported patient, that there are instances when the secondary payor is not known or cannot be determined before the ambulance transportation claim is submitted. In such situations, if it is determined that an inappropriate or duplicate payment is received, the payment should be refunded to the appropriate payor in a timely manner. Accordingly, ambulance suppliers should develop a system to track and quantify credit balances to return overpayments when they occur.

C. Medicare Part A Payment for ''Under Arrangements'' Services

In certain instances, including transports for patients of a SNF, hospital or CAH, Medicare Part A covers ambulance transports. Ambulance suppliers that provide such inpatient transports ''under arrangements'' should not bill Medicare for these transports. Medicare reimburses the facility under

[16] On December 28, 2000, the Department of Health and Human Services (HHS) released its final rule implementing the privacy provisions of the Health Insurance Portability and Accountability Act of 1996. The rule became effective in April 2001, and regulates access, use, and disclosure of personally identifiable health information by covered entities (health providers, plans, and clearinghouses). Guidance on an ambulance supplier's compliance with the HHS Privacy Regulations is beyond the scope of this CPG; however, it will be the responsibility of ambulance suppliers to comply. Most health plans and providers must comply with the rule by April 14, 2003. In the meantime, many organizations are considering and analyzing the privacy issues.

[17] Only licensed physicians and certain other licensed practitioners can make determinations on a patient's diagnosis.

[18] Loaded miles refers to the number of miles that the patient is physically on board the emergency vehicle.

[19] HCFA Program Memorandum Transmittal AB–00–118, issued on November 30, 2000.

the Part A payment for the patient's entire Part A stay, including any pre-discharge ambulance transports. Thus, ambulance suppliers should not submit a claim to Medicare Part A or B for a service that was provided under arrangement with a Part A provider. In addition, all such arrangements should be carefully reviewed to ensure that there is no violation of the anti-kickback statute, as more fully described in section V of this CPG.

IV. Medicaid Ambulance Coverage

The Medicaid program, a joint Federal and State health insurance program, provides funds for health care providers and suppliers that perform or deliver medically necessary services for eligible Medicaid recipients. Medicaid regulations, to which ambulance suppliers must adhere, vary depending on the applicable State regulations. However, two Federal regulations form the basis for all Medicaid reimbursement for transportation services and ensure a minimum level of coverage for transportation services. All States that receive Federal Medicaid funds are required to assure transportation for Medicaid recipients to and from medical appointments (42 CFR 431.53). Federal regulations further define medical transportation and describe costs that can be reimbursed with Medicaid funds (42 CFR 440.170(a)).

In short, Medicaid often covers ambulance transports that are not typically covered by Medicare, such as coverage of transports in wheelchair vans, cabs and ambulettes. The State Medicaid Fraud Control Units and Federal law enforcement have pursued many fraud cases related to transportation services billed to Medicaid programs. Ambulance suppliers should review the Medicaid regulations governing their State or service territories to ensure that any billed services meet applicable Medicaid requirements.

V. Kickbacks and Inducements

A. What Is the Anti-Kickback Statute?

The anti-kickback statute prohibits the purposeful payment of anything of value (*i.e.*, remuneration) in order to induce or reward the generation of Federal health care program business, including Medicare and Medicaid business.[20] (*See* section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b).) It is a criminal prohibition that subjects violators to possible imprisonment and criminal fines. In addition, violations of the anti-kickback statute may give rise to CMPs and exclusion from the Federal health care programs. Both parties to an impermissible kickback transaction may be liable: the party offering or paying the kickback and the party soliciting or receiving it. The key inquiry under the statute is whether the parties intend to pay, or be paid, for referrals. An ambulance supplier should neither make nor accept payments intended to generate Federal health care program business.

B. What Are the ''Safe Harbors''?

The Department has promulgated ''safe harbor'' regulations that describe payment practices that do not violate the anti-kickback statute, provided the payment practice fits squarely within a safe harbor. The safe harbor regulations can be found at 42 CFR 1001.952 and on the OIG web page at *http://www.dhhs.gov/progorg/oig/ak/index.htm#*. The safe harbor regulations are *voluntary* regulations. Thus, failure to comply with a safe harbor does not mean that an arrangement is illegal. Rather, arrangements that do not fit must be analyzed under the anti-kickback statute on a case-by-case basis to determine if there is a violation. To minimize the risk of a violation, ambulance suppliers should structure arrangements to take advantage of the protection offered by the safe harbors. Among the safe harbors potentially relevant to ambulance suppliers are the safe harbors for space and equipment rentals, personal services and management contracts, discounts, employees, price reductions offered to health plans, shared risk arrangements, and ambulance restocking arrangements.[21]

C. What Is ''Remuneration'' for Purposes of the Statute?

Under the anti-kickback statute, ''remuneration'' means virtually anything of value. A prohibited kickback payment may be in paid cash or in-kind, directly or indirectly, covertly or overtly. Almost anything of value can be a kickback, including, but not limited to, money, goods, services, free rent, meals, travel, gifts, and investment interests. Paying for referrals need not be the only or primary purpose of a payment; as courts have found, if any *one* purpose of the payment is to induce or reward referrals, the statute is violated. (*See* section 1128B of the Social Security Act (42 U.S.C. 1320a–7b).)

D. Who Is a Referral Source for Ambulance Suppliers?

Any person or entity in a position to generate Federal health care program business for an ambulance supplier is a potential referral source. Typically, these sources include, but are not limited to, governmental ''9–1–1'' or comparable emergency medical dispatch systems, private dispatch systems, first responders, hospitals, nursing facilities, assisted living facilities, home health agencies, physician offices and patients.

E. For Whom Are Ambulance Suppliers Sources of Referrals?

In some circumstances, ambulance suppliers furnishing ambulance services may be sources of referrals (*i.e.*, patients) for hospitals, other receiving facilities, and second responders. Ambulance suppliers that furnish other types of transportation, such as ambulette or van transportation, may also be sources of referrals for other providers of Federal heath care program services, such as physician offices, diagnostic facilities, and certain senior centers. In general, ambulance suppliers, particularly those furnishing emergency services, have relatively limited abilities to generate business for other providers or inappropriately steer patients to certain emergency providers.

F. How Can Ambulance Suppliers Avoid Risk Under the Anti-Kickback Statute?

Because of the gravity of the penalties under the anti-kickback statute, ambulance suppliers are strongly encouraged to consult with experienced legal counsel about any financial relationships with potential referral sources. In addition, ambulance suppliers should review OIG guidance related to the anti-kickback statute, including advisory opinions, fraud alerts and Special Advisory Bulletins. Ambulance suppliers concerned about particular existing or proposed arrangements may obtain binding advisory opinions from the OIG.[22]

Ambulance suppliers should exercise common sense when evaluating existing

[20] In addition to Medicare and Medicaid, the Federal health care programs include, but are not limited to, TRICARE, Veterans Health Care, Public Health Service programs, and the Indian Health Services.

[21] 42 CFR 1001.952 (b), (c), (d), (h), (i), (t), (u) and (v).

[22] The procedures for applying for advisory opinions are set forth at 42 CFR part 1008 and on the OIG web page at www.oig.hhs.gov/advopn/index.htm. All OIG advisory opinions are published on the OIG web page. Several published opinions involve ambulance arrangements and may provide useful guidance for ambulance suppliers. These include OIG Advisory Opinions 97–6, 98–3, 98–7, 98–13, 99–1, 99–2, 99–5, 00–7, 00–9, 00–11, 01–10, 01–11, 01–12, 01–18, 02–2 and 02–3.

or prospective arrangements under the anti-kickback statute. One good rule of thumb is that all arrangements for items or services between potential referral sources should be *fair market value* in an arm's-length transaction *not* taking into account the volume or value of existing or potential referrals. For each arrangement, ambulance suppliers should carefully and accurately document how fair market value is determined (*e.g.*, by market comparables, open competitive bidding, cost basis, etc.). Discounts should be accurately reflected and appropriately disclosed on all claims and cost reports filed with the Federal health care programs, and accurate and complete records should be kept of all discount arrangements. Ambulance suppliers should consult the safe harbor for discounts (42 CFR 1001.952(h)) when entering into discount arrangements.

Another good rule of thumb is that ambulance suppliers should exercise caution when selling services to purchasers who are also in a position to generate Federal health care program business for the ambulance supplier (*e.g.*, skilled nursing facilities that purchase ambulance services for private pay and Part A patients, but refer Part B and Medicaid patients to the ambulance supplier). Any link or connection between the price offered to the seller and referrals of Federal program business will implicate the anti-kickback statute. In other words, ambulance suppliers should not offer purchasers with Federal health care program business a price that is lower than the price they would charge a purchaser with a comparable volume of business and no Federal health care program referrals.

A third good rule of thumb is that an ambulance supplier should not offer or provide gifts, free items or services, or other incentives of greater than nominal value to referral sources and should not accept such gifts and benefits from parties soliciting referrals from the ambulance supplier. In general, token gifts used on an occasional basis to demonstrate good will or appreciation (*e.g.*, logo key chains, mugs or pens) will be considered to be nominal in value.

G. Are There Particular Arrangements to which Ambulance Suppliers Should be Alert?

Ambulance suppliers should review the following arrangements with particular care: [23]

1. Arrangements for Emergency Medical Services (EMS)

Contracts with cities or other EMS sponsors for the provision of emergency medical services may raise anti-kickback concerns. Ambulance suppliers should not offer anything of value to cities or other EMS sponsors in order to secure an EMS contract, nor should they condition an EMS contract on obtaining non-EMS ambulance business.[24] While cities and other EMS sponsors may charge ambulance suppliers amounts to cover the costs of services provided to the suppliers, they should not solicit inflated payments in exchange for access to EMS patients, including access to dispatch services under ''9–1–1'' or comparable systems.

2. Arrangements With Other Responders

It many situations, it is common practice for a paramedic intercept or other first responder to treat a patient in the field, with a second responder transporting the patient to the hospital. In some cases, the first responder is in a position to influence the selection of the transporting entity. While fair market value payments for services actually provided by the first responder are appropriate, inflated payments by ambulance suppliers to generate business are prohibited, and the Government will scrutinize such payments to ensure that they are not disguised payments to generate calls to the transporting entity.

3. Arrangements With Hospitals and Nursing Facilities

Because hospitals and nursing facilities are key sources of non-emergency ambulance business, ambulance suppliers need to take particular care when entering into arrangements with such institutions. (See, in particular, the second rule of thumb described above.)

4. Arrangements With Patients

Arrangements that offer patients incentives to select particular ambulance suppliers may violate the anti-kickback statute, as well as the CMP law prohibition against giving inducements to Medicare and Medicaid beneficiaries.[25] Potentially prohibited areas include, but are not limited to, routine waivers of copayments, [26] ''insurance programs'' offering patients purported coverage for the ambulance supplier's services only, and free goods and services. Ambulance suppliers may waive copayments based on good faith individualized assessments of financial need, so long as the availability of financial hardship waivers is not advertised.[27]

V. Conclusion

This ambulance compliance risk guidance is intended as a resource for ambulance suppliers to decrease the incidence of errors, fraud and abuse that occur due to, among other factors, lack of knowledge, inadequate training and inadvertent noncompliance. The Government has increased its scrutiny of the health care industry in part in an effort to decrease errors and/or fraudulent and abusive practices. Similarly, we encourage ambulance suppliers to scrutinize their internal practices via their compliance efforts.

Compliance programs should reflect each ambulance supplier's individual and unique circumstances. It has been the OIG's experience that those health care providers that have developed compliance programs not only better understand applicable Federal health care program requirements, but also better understand their internal operations. We are hopeful that this guidance will be a valuable tool in the development and continuation of ambulance suppliers' compliance programs.

Appendix A—Additional Risk Areas

1. ''No Transport'' Calls and Pronouncement of Death

If an ambulance supplier responds to an emergency call, but no transportation of a patient is subsequently required due to the

[23] This list of arrangements is intended to be illustrative, not exhaustive, of potential areas of risk under the anti-kickback statute.

[24] In general, ambulance suppliers may offer cities or other municipal entities free or reduced cost services for uninsured, indigent patients.

[25] The CMP law prohibits giving anything of value to a Medicare or Medicaid beneficiary that the giver knows, or should know, is likely to influence the beneficiary to choose a particular practitioner, provider, or supplier of items or services payable by Medicare or Medicaid. (*See* section 1128A(a)(5) of the Social Security Act (42 U.S.C 1320a–7a(a)(5)). The statute contains several narrow exceptions, including financial hardship copayment waivers, incentives to promote the delivery of preventive care services, and health plan differentials in copayments. In addition, items or services of nominal value (less than $10 per item or service or $50 in the aggregate annually) and any payment that fits into an anti-kickback safe harbor are permitted.

[26] *See* Special Fraud Alert: Routine Waiver of Copayments or Deductibles Under Medicare Part B, 59 FR 65372, 65374 (1994) contained on the OIG web page at http://oig.hhs.gov/frdalrt/index.htm).

[27] Under a special rule, ambulance suppliers *owned and operated by* a State or a political subdivision of a State, such as a municipality or a fire district, may waive Medicare copayments for residents. *See* CMS *Carrier Manual* section 2309.4; CMS *Intermediary Manual* section 3153.3A. This rule does *not* apply to private ambulance suppliers providing services under contract. However, States and political subdivisions of States may pay uncollected, out-of-pocket copayments on behalf of residents. Such payments may be made through lump sum or periodic payments, if the aggregate payments reasonably approximate the otherwise uncollected copayment amounts.

patient's death or patient's refusal to be transported, there are three Medicare rules that apply. If an individual is pronounced dead prior to the time the ambulance was requested, there is no payment. If the individual is pronounced dead after the ambulance has been requested, but before any services are rendered, a BLS payment will be made and no mileage will be paid. If the individual is pronounced dead after being loaded into the ambulance, the same payment rules apply as if the beneficiary were alive. Ambulance suppliers should accurately represent the time of death and request payment based on the aforementioned criteria.

2. Multiple Patient Transports

On occasion, it may be necessary for an ambulance to transport multiple patients concurrently. If more than one patient is transported concurrently in one ambulance, the amount billed should be consistent with the multiple transport guidelines established by the carrier in that region. Under CMS's new ambulance fee schedule rules for multiple transports, Medicare will pay a percentage of the payment allowance for the base rate applicable to the level of care furnished to the Medicare beneficiary (*e.g.,* if two patients are transported simultaneously, 75 percent of the applicable base rate will be reimbursed for each of the Medicare beneficiaries). Coinsurance and deductible amounts will apply to the prorated amounts.

3. Multiple Ambulances Called to Respond to Emergency Call

On occasion, more than one ambulance supplier responds to an emergency call and is present to transport a beneficiary. These are often referred to as ''dual transports.'' In such cases, only the transporting ambulance supplier may bill Medicare for the service provided. The non-transporting ambulance company should receive payment directly from the transporting supplier based on a negotiated arrangement if that company's ambulance crew had provided services to the patient, but had not actually transported the patient to a treatment facility.[28] On occasion, when multiple ambulance crews respond to a call, a BLS ambulance may have provided the transport, but the level of services provided may have been at the ALS level. If a BLS supplier is billing at the ALS level because of the services furnished by an additional ALS crew member, appropriate documentation should accompany the claim to indicate to the carrier that dual transportation was provided. In any event, only one supplier may submit the claim for payment.

4. Billing Medicare ''Substantially in Excess'' of Usual Charges

Ambulance suppliers generally may not charge Medicare or Medicaid patients substantially more than they usually charge everyone else. If they do, they are subject to exclusion by the OIG.[29] This exclusion authority is not implicated unless the supplier's charge for Medicare or Medicaid patients is substantially more than its median non-Medicare/Medicaid charge. A supplier should identify as a risk area its billing practices if it is discounting close to half of its non-Medicare/Medicaid business. Thus, ambulance suppliers should review charging practices with respect to Medicare and Medicaid billing to ensure that they are not charging Medicare or Medicaid substantially more than they usually charge other customers.

Appendix B—OIG–HHS Contact Information

The OIG's web site (www.oig.hhs.gov) contains various links describing the following: (1) The OIG's four different components (Audit Services, Investigations, Evaluations and Inspections, Counsel to the IG); (2) External Information such as how to subscribe to the OIG's mailing list and OIG's Hearing Testimony; (3) Compliance Tools that include a list of the OIG's Compliance Guidance, Corporate Integrity Agreements, and Self-Disclosure Information; (4) Fraud Detection and Prevention efforts including anti-kickback information, Advisory Opinions, and Fraud Alerts & Bulletins; and (5) Reports and Publications. Such information is frequently updated and is a useful tool for ambulance providers seeking additional OIG resources.

Also listed on the OIG's web site is the OIG Hotline Number. One method for providers to report potential fraud, waste and abuse problems is to contact the OIG Hotline number. All HHS and contractor employees have a responsibility to assist in combating fraud, waste, and abuse in all departmental programs. As such, providers are encouraged to report matters involving fraud, waste and mismanagement in any departmental program to the OIG. The OIG maintains a hotline that offers a confidential means for reporting these matters.

Contacting the OIG Hotline

By Phone: 1–800–HHS–TIPS (1–800–447–8477)
By Fax: 1–800–223–8164
By E-Mail: *Htips@os.dhhs.gov*
By TTY: 1–800–377–4950
By Mail: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201

When contacting the hotline, please provide the following information to the best of your ability:

—Type of Complaint:
Medicare Part A
Medicare Part B
Indian Health Service
TRICARE
Other (please specify)
—HHS Department or program being affected by your allegation of fraud, waste, abuse/mismanagement:
Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration)
Indian Health Service
Other (please specify)
—Please provide the following information (however, if you would like your referral to be submitted anonymously, please indicate such in your correspondence or phone call):
Your Name
Your Street Address
Your City/County
Your State
Your Zip Code
Your E-mail Address
—Subject/Person/Business/Department that allegation is against:
Name of Subject
Title of Subject
Subject's Street Address
Subject's City/County
Subject's State
Subject's Zip Code
—Please provide a brief summary of your allegation and the relevant facts.

Appendix C—Carrier Contact Information

1. Medicare

A complete list of contact information (address, phone number, e-mail address) for Medicare Part A Fiscal Intermediaries, Medicare Part B Carriers, Regional Home Health Intermediaries, and Durable Medical Equipment Regional Carriers can be found on the CMS web site *at www.hcfa.gov/medicare/incardir.htm.*

2. Medicaid

Contact information (address, phone number, e-mail address) for each State Medicaid director can be found on the CMS web site *at www.hcfa.gov/medicaid/mcontact.htm.* In addition to a list of State Medicaid directors, the web site includes contact information for each State survey agency and the CMS Regional Offices.

3. Ambulance Fee Schedule

Information related to the development of the ambulance fee schedule is located at www.hcfa.gov/medicare/ambmain.htm.

Appendix D—Internet Resources

1. Office Of Inspector General (www.oig.hhs.gov)

This web site includes a variety of information relating to Federal health care programs, including the following:

Components

- Audit Services
- Investigations
- Evaluation and Inspections
- Counsel to the IG
- Management and Policy

Compliance Tools

- Compliance Guidance
- Corporate Integrity Agreements

[28] These payments should be fair market value for services actually rendered by the non-transporting supplier, and the parties should review these payment arrangements for compliance with the anti-kickback statute.

[29] The OIG may exclude from participation in the Federal health care programs any provider that submits or causes to be submitted bills or requests for payment (based on charges or costs) under Medicare or Medicaid that are substantially in excess of such providers' usual charges or costs, unless the Secretary finds good cause for such bills or requests. *See* section 1128(b)(6) of the Social Security Act (42 U.S.C. 1320a–7(b)(6)).

- Self-Disclosure Information

Press Information

- Subscribe to Mailing List
- OIG News
- Hearing Testimony

Fraud Detection and Prevention

- Anti-Kickback Information
- Advisory Opinion
- Fraud Alerts and Bulletins

Reports and Publications

- Audit Reports
- Evaluation Reports
- Semi-Annual Reports
- Orange Book
- Red Book
- Work Plan
- Regulations and **Federal Register** Notices

2. Centers for Medicare and Medicaid Services (www.hcfa.gov)

This web site includes information on a wide array of topics, including the following:

a. Medicare

- National Correct Coding Initiative
- Intermediary-Carrier Directory
- Payment
- Program Manuals
- Program Transmittals and Memorandum
- Provider Billing/CMS Forms
- Statistics and Data

b. Medicaid CMS Regional Offices

- Letters to State Medicaid Directors
- Medicaid Hotline Numbers
- Policy and Program Information
- State Medicaid Contacts
- State Medicaid Manual
- State Survey Agencies
- Statistics and Data

3. CMS Medicare Training (www.hcfa.gov/learning)

This web site provides computer-based training on the following topics:

- CMS 1500 Form
- Fraud and Abuse
- ICD–9–CM Diagnosis Coding
- Medicare Secondary Payer
- Introduction to the World of Medicare
- CMS 1450 (UB92)

4. Government Printing Office (www.access.gpo.gov)

This web site provides access to Federal statutes and regulations pertaining to Federal health care programs.

5. The U.S. House of Representatives Internet Library (http://.uscode.house.gov/usc.htm)

This web site provides access to the United States Code, which contains laws pertaining to Federal health care programs.

Dated: May 20, 2002.

Janet Rehnquist,

Inspector General.

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BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Center for Scientific Review (CSR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: partner and Customer Satisfaction Surveys. *Type of Information Collection Request:* Revision OMB #0925–0474; expires September 30, 2002. *Need and Use of Information Collection:* The information collection in these surveys will be used by Center for Scientific Review personnel: (1) To assess the quality of operations and processes used by CSR to review grant applications; (2) to assess the quality of service provided to our partners and customers; (3) to assist with the design of modifications of these operations, processes and services, based on partner and customer input; (4) to develop new modes of operation based on partner and customer need; and (5) to obtain partner and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The survey for partners is generic and tailored for Scientific Review Group (SRG) past and present members and chairs. The survey for customers (*i.e.,* grant applicants) will have slight variations determined by which category of scientific review group the researcher/investigator's grant application is reviewed. Surveys will be collected as written documents or via the Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, and services of our organization. *Frequency of Response:* Yearly. *Affected Public:* Universities, not-for-profit institutions, business or other for-profit, small businesses and organizations, and individuals. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 6,081 respondents in FY 2003, 6081 respondents in FY 2004 and 6081 respondents in FY 2005. *Estimated Number of Responses per Respondent:* 1 in FY 2003, 1 in FY 2004, and 1 in FY 2005. *Average Burden Hours Per Response:* 0.33. *Estimated Total Annual Burden Hours Requested:* 2007 in FY 2003, 2007 in FY 2004 and 2007 in FY 2005. Costs for time were estimated using the rate of $38.00 per hour for SRG members, SRG chairs, and principal investigators/grant applicants. The estimated annual cost each year for which the generic clearance is requested is $76,266 for FY 2003, $76,266 for FY 2004 and $76,266 for FY 2005. Respondents or recordkeepers should incur no additional costs.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Karl Malik, Ph.D., Office of the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rockledge II, Rm. 3016, Bethesda, MD 20892–7814, or call non-toll free: 301–435–1114, or E-mail your request, including your address to: *malikk@csr.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before August 5, 2002.

Dated: May 30, 2002.

John Czajkowski,

Acting Executive Officer, Center for Scientific Review, NIH.

[FR Doc. 02–14118 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 24–25, 2002.

Time: June 24, 2002, 8:30 a.m. to 6 p.m.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: June 25, 2002, 9 a.m. to 6 p.m.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, RM. 8141, Bethesda, MD 20892, 301–496–4218.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14105 Filed 6–5–02; 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 contract applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Research Network Across Healthcare System.

Date: June 21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: to review and evaluate applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286.

(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: May 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14106 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Basic Science.

Date: June 5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical and Translational Science.

Date: June 13–14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: William A. Kachadorian, PhD, MTS, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary Alternative Medicine, 6707 Democracy Blvd., Ste. 106, Bethesda, MD 20892–5475, (301) 594–2014, *Kachadow@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, PAR–02–040—CAM and Oncology.

Date: June 17–18, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine

Special Emphasis Panel, Training and Manpower.

Date: June 25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary, and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: May 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14104 Filed 6–5–02; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 7, 2002.

Open: 8 a.m. to 11 a.m.

Agenda: A review and discussion of current NICHD intramural research activities will be discussed.

Place: Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 11 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14107 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: June 20–21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14109 Filed 6–5–02; 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 ''Culturally Valid Interventions''.

Date: June 5, 2002.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

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, dsommers@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Mental Health Services Research Career Development.

Date: June 18, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: to review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9608, Bethesda, MD 20892–9608, 301–443–6471, kozakm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel NEUROIMAGING SEP.

Date: July 9, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, hhaigler@mail.nih.gov.

(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: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14110 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 5523b(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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 17, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, Phd, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 595–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14112 Filed 6–05–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Paget's Disease.

Date: July 12, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14113 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: June 26, 2002.

Time: 3:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Transdisciplinary Prevention Research Centers.

Date: July 10–11, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Using

Basic Science to Develop New Directions in Drug Abuse Prevention Research.

Date: July 16–17, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton-Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, New Approaches to Prevent HIV/Other Infections in Drug Users.

Date: July 30, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton-Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Hepatitis C Diagnosis, Treatment, and Interaction with HIV/AIDS.

Date: August 1–2, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton-Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14114 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Biosensor Mass Spectrometry Array''.

Date: June 13, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14115 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended 95 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel U.S. Based Collaboration in Emerging Viral and Prion Diseases (Viral).

Date: June 26–27, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Mark S. Hanson, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6770B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National inistitutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14116 Filed 6–5–02; 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 give of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Dental Education Contract.

Date: July 1, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894, (Telephone Conference Call).

Contract Person: Susan Sparks, PhD, Senior Education Specialist, Extramural

Programs, NLM, 6705 Rockledge Dr., Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14108 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: June 6–7, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW, Washington, DC 2007.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (01).

Date: June 10–11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham, 3000 M Street NW, Washington, DC 20007.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

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, ZRG1 CDF–4 (02).

Date: June 13–14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: May 30, 2002,

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14111 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 ZRG1 OMB–1 (01).

Date: June 18–19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CDF–4 (03).

Date: June 18, 2002.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel ZRG1 SSS–A (02).

Date: June 20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel Brain Disorders and Clinical Neurosciences 6 (1).

Date: June 20–21, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR–1 (01) Review of AIDS-related Molecular Biology & Virology grants.

Date: June 23–24, 2002.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group Orthopedics and Musculoskeletal Study Section.

Date: June 24–25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mdonald@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Molecular, Cellular and Developmental Neurosciences 5.

Date: June 24–25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SMB (01).

Date: June 24–25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Metabolic Pathology Study Section.

Date: June 24–25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, N.W., Washington, DC 20037.

Contact Person: Angela Y. Ng, MBA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group Cell Development and Function 5.

Date: June 24–25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–4 (10).

Date: June 24–25, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Physical Biochemistry Study Section.

Date: June 24–25, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Bacteriology and Mycology Subcommittee 1.

Date: June 24–25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group Biobehavioral and Behavioral Processes 4.

Date: June 24–25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street NW., Washington, DC 20005–2750.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 REB (01).

Date: June 24, 2002.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 Surgery and Bioengineering (01).

Date: June 25, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel Microbial Physiology and Genetics Subcommittee 1 (01).

Date: June 25–26, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Alicia J. Dombroski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, 301–435–1149, *dombrosa@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Epidemiology and Diseases Control Subcommittee 2.

Date: June 25–26, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CVB (01) Thyroid Hormone receptor in hypertrophy.

Date: June 25, 2002.

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: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 1FCN–1 (03) Sleep and Temperature Regulation.

Date: June 25, 2002.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Molecular, Cellular and Developmental Neurosciences 7.

Date: June 26–27, 2002

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BDCN–2 (01).

Date: June 26–27, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Experimental Therapeutics Subcommittee 2.

Date: June 26–28, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BDCN–5 (02) RFA.

Date: June 26–27, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radison Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Genome Study Section.

Date: June 26–28, 2002.

Time: 7:30 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Radison Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

(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: May 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14117 Filed 6–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4733–N–03]

Notice of Proposed Information Collection: Comment Request; CDBG Urban County Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room *7232*, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, (202) 708–1577 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant (CDBG) Urban County and New York Towns Qualification/Requalification Processes.

OMB Control Number, if applicable: 2506–0170.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended, at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may enter into a cooperation agreement to participate in the CDBG program as part of the county. Section 102(d) of the statute specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD on a triennial basis identifying the communities within the county participating as a part of the county for purposes of receiving CDBG funds. The population of included units of local government for each eligible urban county and New York town are used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York towns must undertake a similar process on a triennial basis because under New York state law, towns that contain incorporated units of general local government within their boundaries cannot qualify as metropolitan cities unless they execute cooperation agreements with *all* such incorporated units.

The New York towns qualification process must be completed prior to the qualification of urban counties so that any town that does not qualify as a metropolitan city will still have an opportunity to participate as part of an urban county.

Agency form numbers, if applicable: N/A.

Members of affected public: Urban counties and New York towns that are eligible as entitlement grantees of the CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: There are currently 158 qualified urban counties participating in the CDBG program that must requalify on a triennial basis. On average, 2 new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 72 hours to review instructions, contact communities in the county, prepare and review agreements, obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 40 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability to use agreements with no specified end date. Use of such ''renewable'' agreements enables the grantee to merely notify affected participating units of government in writing that their agreement will automatically be renewed unless the unit of government terminates the agreement in writing, rather than executing a new agreement every three years.

Average of 2 new urban Counties qualify per year:
2×72 hrs = 144 hrs.
158 grantees requalify on triennial basis; average ann. num. of respondents = 53
53×40 hrs. = 2,120 hrs.
Total = 2,264 hrs.

There are 10 New York towns that requalify on a triennial basis.

They, too, may use ''renewable'' agreements that reduce the burden required under this process. The Department estimates that New York towns, on average, use 30 hours on a triennial basis to complete the requalification process.

10 towns requalify on triennial basis; average annual number of respondents = 3.3
$3.3 \times 30 = 100$ hrs.
Total combined burden hours: 2,364 hrs.

This total number of combined burden hours can be expected to increase by 144 hours annually given the average of 2 new urban counties becoming eligible entitlement grantees each year.

Status of the proposed information collection: Existing collection number will expire September 30, 2002.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 30, 2002.

Roy A. Bernardi,

Assistant, Secretary for Community, Planning and Development.

[FR Doc. 02–14091 Filed 6–5–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–C–2B]

FY 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grants Programs for Fiscal Year 2002; Notice of Extension of Application Deadline for Applicants in Charles, St. Mary and Calvert Counties, MD and McDowell, WY, Mercer and Mingo Counties, WV for the Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disability Program

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grant Programs; Notice of extension of application deadline.

SUMMARY: On March 26, 2002, HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. This notice extends the application due date for applicants in Charles, St. Mary and Calvert Counties, Maryland (designated as disaster areas as the result of tornados) and in McDowell, Wyoming, Mercer and Mingo Counties, West Virginia (designated as disaster areas as the result of severe storms, flooding, and landslides) who are seeking funding under Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities.

DATES: The application due date for the Section 202 Supportive Housing for the Elderly Program applicants located in the Federally designated disaster areas has been extended to July 9, 2002. For all other Section 202 Program applicants, the due date remains June 5, 2002.

The application due date for the Section 811 Supportive Housing for Persons with Disabilities for applicants in the disaster areas has been extended to July 9, 2002. For all other Section 811 Program applicants, the due date remains June 5, 2002.

FOR FURTHER INFORMATION CONTACT: For the Section 202 and Section 811 programs affected by this notice, please contact the office or individual listed under the **FOR FURTHER INFORMATION CONTACT** heading in the individual program section of the SuperNOFA, published on March 26, 2002 at 67 FR13826.

SUPPLEMENTARY INFORMATION: On March 26, 2002 (67 FR 13826), HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. The FY 2002 SuperNOFA announced the availability of approximately $2.2 billion in HUD program funds covering 41 grant categories within programs operated and administered by HUD offices. This notice published in today's **Federal Register** extends the application due date for the Section 202 and Section 811 program for applicants located in counties declared disaster areas by the Federal Emergency Management Agency (FEMA) declarations FEMA–1409–DR and FR–1410–DR. Specifically, these declarations cover Charles, St. Mary and Calvert counties, Maryland and McDowell, Wyoming, Mercer and Mingo counties, West Virginia. Any additional counties designated as federal disaster areas under FEMA–1409–DR or FR–1410–DR will be posted on HUD's web page (*www.hud.gov*) and published by Federal Emergency Management Agency (FEMA) in the **Federal Register**. For all other Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities Program applicants, the application due date of June 5, 2002 remains unchanged.

Dated: May 23, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–14089 Filed 6–5–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–23]

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: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, 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: May 31, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–14092 Filed 6–5–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE004812–1

Applicant: Timothy J. Krynak, Rocky River Nature Center, North Olmsted, Ohio.

The applicant requests a permit amendment to take (capture, handle, and harass) Indiana bat (*Myotis sodalis*) throughout Summit, Cuyahoga, and Medina Counties in Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE057462

Applicant: Mark D. Yates, Columbia, Missouri.

The applicant requests a permit amendment to take (capture, handle, and harass) Indiana bat (*Myotis sodalis*) and gray bat (*Myotis grisescens*) in Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov,* telephone (612) 713–5343, or FAX (612) 713–5292.

Dated: May 23, 2002.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–14238 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Annual Notice of Recycled Petition Finding for the Slender Moonwort

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this notice of review, we announce our recycled petition finding, as required in section 4(b)(3)(C)(i) of the Endangered Species Act of 1973, as amended, for *Botrychium lineare* (slender moonwort). When, in response to a petition, we complete a 12-month finding that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings.

Information contained in this notice of review is based on our review of the current status and threats to this species that is the subject of an outstanding warranted but precluded finding. Based on our review, we find that *Botrychium lineare* continues to warrant listing, but this activity is precluded by listing activities of higher priority.

We request additional status information that may be available for this species. We will consider this information in preparing listing documents and future recycled petition findings. This information will help us in monitoring changes in the status of *Botrychium lineare* and in conserving this species.

DATES: We will accept comments on this recycled petition finding at any time.

ADDRESSES: Submit your comments to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Written comments and materials received in response to this notice will be available for public inspection, by appointment, during normal business hours at the Snake River Basin Office.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor (see **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), provides two mechanisms for considering species for listing. First, the Act places on the Service the duty to identify and propose for listing those species which we find require listing under the standards of section 4(a)(1). We implement this through the candidate assessment program. Candidate species are those taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded, at present, by other higher priority listing actions. Second, the Act provides a mechanism for the public to petition us to add a species to the Lists of Threatened and Endangered Wildlife and Plants. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a ''90-day finding''). If we make a positive 90-day finding, under section 4(b)(3)(B), we must make one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding'').

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that

listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, sections 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is ''warranted but precluded.'' Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Similarly, we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding.

Pursuant to section 4(b)(3)(C)(i), when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule to make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings. This notice constitutes publication of our recycled petition finding for *Botrychium lineare*.

Previous Federal Action

On July 28, 1999, we received a petition dated July 26, 1999, from the Biodiversity Legal Foundation. The petitioner requested us to list *Botrychium lineare* as endangered or threatened and to designate critical habitat within a reasonable period of time following the listing. The petitioner submitted biological, distributional, historical, and other information and scientific references in support of the petition.

On May 10, 2000 (65 FR 30048), we published a 90-day petition finding concluding that the petition presented substantial information indicating that the requested action may be warranted. Accordingly, we initiated a status review pursuant to section 4(b)(3)(B) on the petitioned action.

We reviewed the petition, and published a notice of a 12-month petition finding in the **Federal Register** on June 6, 2001 (66 FR 30368). Based on the best scientific and commercial information available, we believe that sufficient information is currently available to support a finding that listing *Botrychium lineare* as threatened is warranted, but that a proposed rule at this time is precluded by work on other higher priority listing actions.

Section 4(b) of the Act states that we may make warranted but precluded findings only if we find that: (1) An immediate proposed rule is precluded by other pending actions, and (2) expeditious progress is being made on other listing actions. Due to the large amount of litigation we face, primarily over critical habitat, we are working on numerous listing actions mandated by court orders and settlement agreements. Complying with these orders and settlement agreements will consume nearly all or all of our listing budget for FY 2002. Any funding we may have available for discretionary listing actions will likely be allocated for emergency listings only. However, we can continue to place species on the candidate species list.

Finding on the Slender Moonwort Petition

Pursuant to section 4(b)(3)(C)(i), when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings.

We reviewed the current status and threats to *Botrychium lineare,* and we have found the petitioned action to be warranted but precluded for this species. As a result of this review, we continue to make a warranted but precluded finding for *Botrychium lineare.* As discussed above, this finding means that the immediate publication of proposed rules to list these species was precluded by our work on the following higher priority listing actions during the period from November 1, 2001, through May 30, 2002: Court orders or settlement agreements to propose critical habitat and/or complete critical habitat determinations for 3 southern California plants, Kneeland Prairie pennycress, purple amole, Santa Cruz tarplant, Oahu elepaio, Newcomb's snail, 76 Kauai and Nihau plants (reproposal), 5 California carbonate plants, Blackburn's sphinx moth, 32 Lanai plants (reproposal), 2 Hawaiian invertebrates, 8 northwest Hawaiian Islands plants, 61 Maui and Kahoolawe plants (reproposal), Quino checkerspot butterfly, 46 Molokai plants (reproposal), San Bernardino kangaroo rat, 56 Hawaiian Island plants, 15 vernal pool species (4 fairy shrimp and 11 plants), 103 Oahu plants, Rio Grande silvery minnow, gulf sturgeon; proposed listings for pygmy rabbit, Carson's wandering skipper, Island fox, 4 southwestern invertebrates (proposed listing with critical habitat), and Tumbling Creek cavesnail; final listing determinations for Buena Vista Lake shrew, showy stickseed, scaleshell mussel, Vermilion darter, Mississippi gopher frog, golden sedge, and desert yellowhead; emergency listings for pygmy rabbit, Carson's wandering skipper, and Tumbling Creek cavesnail; 90-day petition finding for Miami blue butterfly; and 12-month petition finding for Big Cypress fox squirrel and Cape Sable seaside sparrow (for critical habitat).

We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for this species, for the preceding 7 months has been, and will over the next year, be precluded by higher priority listing actions. During the past 7 months, almost all of our listing budget has been needed to take various listing actions to comply with court orders and court-approved settlement agreements. For a list of the listing actions taken over the 7 months, see the discussion of ''Progress on Revising the Lists,'' below.

For the next year, the majority of our remaining listing budget for FY 2002, and our anticipated listing budget for FY 2003 based on the President's requested budget, will be needed to take listing actions to comply with court orders and court-approved settlement agreements. Currently, we will address or complete the following actions: Court ordered or settlement agreements to complete the critical habitat determinations for 57 Hawaii Island plants, Otay tarplant, Oahu elepaio, Blackburn's sphinx moth, Newcomb's snail, 2 Kauai invertebrates, 81 Kauai and Niihau plants, yellow and Baker's larkspurs, 3 Southern California coastal plants, Keck's checkermallow, purple amole, 69 Maui and Kahoolawe plants, Santa Cruz tarplant, 37 Lanai plants, 49 Molokai plants, 6 Northwestern Hawaiian Islands plants, 101 Oahu plants, 15 vernal pool fairy shrimp, Carolina heelsplitter and Appalachian elktoe, Kneeland prairie pennycress, 6 Guam species, bull trout, 5 carbonate plants, Ventura Marsh milkvetch, Cook's lomatium and large-flowered wooly meadowfoam, Rio Grande silvery minnow, 9 Texas invertebrates, Topeka shiner, Prebles' meadow jumping mouse, Great Plains piping plover, and a final determination for the Sacramento splittail. In addition, the following are higher priority statutory deadlines: final listing for Mississippi gopher frog, Chiricahua leopard frog, Gila chub,

golden sedge, mountain plover, San Diego ambrosia, southern California mountain yellow-legged frog, coastal cutthroat trout, slickspot peppergrass, and desert yellowhead.

Finally, work on a proposed rule for *Botrychium lineare,* with a listing priority number of 11, is also precluded by the need to issue proposed rules for higher priority species, particularly those facing high-magnitude, imminent threats (i.e., listing priority numbers of 1, 2, or 3).

Below, we provide information on the biology, current status, and threats to *Botrychium lineare.* More complete information, including references, are found in the candidate form. You may obtain a copy of this form from the Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6158), or from the Service's web site: *http://endangered.fws.gov/.* You may also direct general comments or questions to this address. We will consider all information provided in response to this notice of review in deciding whether to propose *Botrychium lineare* for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the species.

Biological Information

Botrychium lineare (slender moonwort) (Ophioglossaceae) is a small perennial fern that is currently known from a total of 9 (possibly 11) populations in Colorado, Oregon, Montana, and Washington. Surveys conducted in 2001 identified two new *Botrychium lineare* populations in Idaho and Nevada on the basis of their plant morphology, although Farrar (Iowa State University, *in litt.* 2002) stated that their identity should be verified by enzyme electrophoresis. Historic populations were previously known from Idaho (Boundary County), Montana (Lake County), California (Fresno County), Colorado (Boulder County), and Canada (Quebec and New Brunswick), have not been seen for at least 20 years and may be extirpated (Wagner and Wagner 1994). Known threats to populations of this species include road maintenance, herbicide spraying, trampling by recreational foot or vehicle traffic, timber harvest, trampling and grazing by wildlife and livestock, exotic species, and development. Because we concluded that the overall magnitude of threats to *Botrychium lineare* throughout its range is moderate, and the overall immediacy of these threats is non-imminent, we assigned this species a listing priority number of 11. We assign this number based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in a September 21, 1983, **Federal Register** notice (48 FR 43098).

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a warranted but precluded finding on a petitioned action, we must be making expeditious progress to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. This notice describes our progress in revising the lists with regards to the slender moonwort since our October 30, 2001, publication of the last CNOR. We intend to publish such descriptions annually as part of the Candidate Notice of Review.

Our progress in listing and delisting qualified species since October 30, 2001, is represented by the publication in the **Federal Register** of final listing actions for 6 species, emergency listing actions for 3 species, proposed listing actions for 10 species, and proposed delisting actions for 3 species. In addition, we proposed critical habitat for 184 listed species, reproposed critical habitat for 215 species, and finalized critical habitat for 3 listed species. Given our limited budget for implementing section 4 of the Act, these achievements constitute expeditious progress.

Request for Information

Although we are not proposing a listing priority change or removal of candidate status at this time, any new information we receive on the distribution of and threat/conservation actions for *B. lineare* may have a bearing on whether listing under the Act is still warranted. We request you submit any further information on this species as soon as possible or whenever it becomes available. We especially seek information:

(1) Indicating that we should remove this species from candidate status;

(2) Recommending areas that we should designate as critical habitat for *Botrychium lineare,* or indicating that designation of critical habitat would not be prudent for the species;

(3) Documenting threats to *Botrychium lineare;*

(4) Describing the immediacy or magnitude of threats facing *Botrychium lineare;*

(5) Pointing out taxonomic or nomenclatural changes for *Botrychium lineare;* or

(6) Noting any mistakes, such as errors in the indicated historical range.

References Cited

Wagner, W.H. and F.S. Wagner. 1994. Another widely disjunct, rare and local North American moonwort (Ophioglossaceae: *Botrychium* subg. *Botrychium*). American Fern Journal 84(1):5–10.

Authority

This notice of review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 31, 2002.

Marshall P. Jones Jr.,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–14155 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Termination of the Environmental Impact Statement on the Spruce Creek Access Proposal, Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is terminating an environmental impact statement (EIS) to evaluate an application for a right-of-way permit to a private inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve for the purpose of constructing and operating a remote lodge. The NPS released a draft EIS in July 1999 (published by NPS at 64 FR 41944, August 2, 1999, and by EPA at 64 FR 42942, August 5, 1999), and the public comment period ended October 6, 1999. The applicants requested in May 2000 that NPS not release the final EIS while they considered an NPS offer to purchase the property. The NPS purchased the land and all commercial use rights in February 2002. The former owners reserved rights to two one-acre parcels with cabins for their private, personal use and they requested NPS terminate the EIS.

The owners of the personal, non-commercial rights on the two one-acre parcels have requested access over the existing mining access trails and use of the existing Glen Creek airstrip pursuant to the Alaska National Interest Lands Conservation Act of 1980, Section 1110(b)—Access to Inholdings. In consultation with the NPS the

applicants propose minor new road construction to avoid driving in the bed of Spruce Creek. The new access request would require much less construction and result in less adverse impact on park resources and values than the original access request to construct and operate a lodge. NPS is issuing an environmental assessment (EA) to evaluate the impacts of the new access request and alternatives. The EA will be made available to those who commented on the draft EIS and other interested parties.

FOR FURTHER INFORMATION CONTACT: Paul R. Anderson, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755. Telephone (907) 683–9581.

Marcia Blaszak,

Acting Regional Director, Alaska Region.

[FR Doc. 02–14016 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: July 9, 2002, 8:30 a.m.

ADDRESSES: The meeting will be held at the Laurel Point Inn, 680 Montreal Street, Victoria, British Columbia V8V1Z8. The Laurel Point Web site is *www.laurelpoint.com.* The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: May 20, 2002.

Thomas O. Melius,

Assistant Director, Migratory Birds and State Programs, Fish and Wildlife Service.

[FR Doc. 02–14131 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Notice of Availability; Wilson's Creek National Battlefield, MO

AGENCY: National Park Service.

ACTION: Notice of availability of the draft general management plan/draft environmental impact statement for Wilson's Creek National Battlefield.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft general management plan/draft environmental impact statement (DGMP/DEIS) for Wilson's Creek National Battlefield (Battlefield).

DATES: There will be a 60-day public review period for comments on this DGMP/DEIS. Comments on the DGMP/DEIS must be received 60-days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register** or following an announcement in local papers, which ever is published later. Two public open houses for information about, or to make comment on the DGMP/DEIS will be held in or around Springfield, Missouri. Information about time and place will be available by contacting the park at the address below. Open house schedules will be published in local papers.

ADDRESSES: Copies of the DCMP/DEIS are available upon request by writing to Wilson's Creek National Battlefield, 6424 W. Farm Road 182, Republic, Missouri, 65738–9514. The document can be picked-up in person at the Battlefield's headquarters located at the address above.

FOR FURTHER INFORMATION CONTACT: Superintendent, Wilson's Creek National Battlefield 6424 W. Farm Road 182, Republic, Missouri, 65738–9514, or at telephone number 417–732–2662.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan (GMP) is to set forth the basic management philosophy for the Battlefield and to provide the strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of a proposed action and one action alternatives for the future management direction of the Battlefield. A no action alternative is also evaluated. Alternative B, *Wilson's Creek National Battlefield Commemoration,* the preferred alternative, would focus on efforts to commemorate the Battle of Wilson's Creek and emphasize a reflective and contemplative visitor experience. Recreational use would be allowed but would be managed so as not to conflict with the core mission of the park or the primary visitor experience. Alternative C, *Wilson's Creek Civil War Research Center,* would focus on Wilson's Creek distinctive combination of site integrity and artifact and archival collections in developing the park as an outstanding research center. Alternative A, the no action alternative, would continue management of the Battlefield as it is. Existing programs and program emphasis would not change.

Persons wishing to comment may do so by one of several methods. They may attend the open houses noted above. They may mail comments to Superintendent, Wilson's Creek National Battlefield, 6424 W. Farm Road 182, Republic, Missouri, 65738–9514. They also may hand-deliver comments to the Battlefield at the above address.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. As always, the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments will not be considered.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: April 8, 2002.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 02–14216 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held

June 10–11, 2002, 8 a.m., at the Radisson Hotel, 185 Union Ave., Memphis, Tennessee 38103–2649.

The Trail of Tears National Historic Trail Advisory Council was established administratively under authority of Section 3 of Public Law 91–383 (16 U.S.C. 1s–2(c)), to consult with the Secretary of the Interior on the implementation of a comprehensive plan and other matters relating to the Trail, including certification of sites and segments, standards for erection and maintenance of markers, preservation of trail resources, American Indian relations, visitor education, historical research, visitor use, cooperative management, and trail administration.

The matters to be discussed include:

- NPS trail program management review
- Trail budget
- Comprehensive Management and Use Plan implementation strategies

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with James F. Wood, Acting Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact the Superintendent, Long Distance Trails Group Officer-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone (505) 988–6888. Minutes of the meeting will be available for public inspection at the Office of the Superintendent located in Room 1081, Paisano Building, 2968 Rodeo Park Drive West, Santa Fe, New Mexico.

Dated: April 30, 2002.

John T. Conoboy,

Acting Superintendent.

[FR Doc. 02–14190 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–422–425 and 731–TA–964–983 (Final)]

Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The United States International Trade Commission (Commission) hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–422–425 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–964–983 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports of certain cold-rolled steel products from Argentina, Brazil, France, and Korea, and less-than-fair-value imports of such merchandise from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *ffischer@usitc.gov),* Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce (Commerce) that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Argentina, Brazil, France, and Korea of certain cold-rolled steel products, and that such products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b).

The investigations were requested in petitions filed on September 28, 2001 with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN; [1] Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH); and Weirton Steel Corporation, Weirton, WV.[2]

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21

[1] National Steel Corporation is not a petitioner with respect to Japan.

[2] Weirton Steel Corporation is not a petitioner with respect to the Netherlands.

days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 3, 2002, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 18, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 8, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference (if necessary) to be held at 9:30 a.m. on July 10, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 11, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 25, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 25, 2002. On August 19, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 21, 2002, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. Parties may submit additional final comments pertaining to investigations in which Commerce has extended its final determinations on or before October 11, 2002. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 31, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–14157 Filed 6–5–02; 8:45 am]

BILLING CODE 7020–20–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–932 (Final)]

Certain Folding Metal Tables and Chairs From China

Determinations

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain folding metal chairs, provided for in subheadings 9401.71.00 and 9401.79.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that an industry in the United States is materially injured by reason of imports from China of certain folding metal tables, provided for in HTS subheading 9403.20.00, that have been found by Commerce to be sold in the United States at LTFV. The Commission further determines that critical circumstances do not exist with regard to imports of certain folding metal tables and chairs from China that are subject to Commerce's affirmative critical circumstances finding.[2]

Background

The Commission instituted this investigation effective April 27, 2001, following receipt of a petition filed with the Commission and Commerce by Meco Corp., Greeneville, TN. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain folding metal tables and chairs from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing 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 January 8, 2002 (67 FR 916). The hearing was held in Washington, DC, on April 23, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on June 3, 2002. The views of the Commission are contained in USITC Publication 3515 (June 2002), entitled *Certain Folding Metal Tables and Chairs from China: Investigation No. 731–TA–932 (Final).*

By order of the Commission.

Issued: May 31, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–14119 Filed 6–5–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg found that critical circumstances exist with regard to imports of certain folding metal tables and chairs from China that are subject to Commerce's affirmative critical circumstances finding.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–426 and 731–TA–984–985 (Final)]

Sulfanilic Acid From Hungary and Portugal

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: Effective on May 6, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigations (**Federal Register** 67 FR 35832, May 21, 2002). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by the U.S. Department of Commerce, which is September 18, 2002 (**Federal Register** 67 FR 36151, May 23, 2002). The Commission, therefore, is revising its schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than September 17, 2002; the prehearing conference, if needed, will be held at the U.S. International Trade Commission Building at 9:30 a.m. on September 20, 2002; the prehearing staff report will be placed in the nonpublic record on September 11, 2002; the deadline for filing prehearing briefs is September 18, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on September 24, 2002; the deadline for filing posthearing briefs is October 1, 2002; the Commission will make its final release of information on October 15, 2002; and final party comments are due on October 17, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 3, 2002

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–14329 Filed 6–5–01; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Johnson Matthey, Inc.: Conditional Grant of Registration To Import Schedules II Substances

I. Background

Johnson Matthey, Inc., (Johnson Matthey) is registered with DEA to import phenyl acetone, a Schedule II controlled substance, and as a bulk manufacturer of a number of Schedule I and II substances, including oxycodone and hydrocodone. On December 23, 1998, Johnson Matthey submitted an application for renewal of its registration as an importer of Schedule II controlled substances. The application sought to renew Johnson Matthey's registration to import phenyl acetone, and to modify Johnson Matthey's registration to include importation of the narcotic raw materials concentrate of poppy straw (CPS) and raw opium (hereinafter referred to collectively as ''NRMs''). On December 23, 1998, Johnson Matthey also applied for renewal of its registration to manufacture Schedule I and II controlled substances in bulk. On April 9, 1999, DEA published notice of these applications in the **Federal Register.** The notices advised that any manufacturer holding or applying for registration as a manufacturer of this basic class of controlled substance could file written comments or objections to the applications and could also file a written request for a hearing on the applications in accordance with 21 CFR 1301.43.

In response to the publication, on May 10, 1999, both Mallinckrodt, Inc., (Mallinckrodt) and Noramco of Delaware, Inc., (Noramco) submitted comments, objections and requests for hearing in connection with Johnson Matthey's application to import NRMs. A Notice of Administrative Hearing, Summary of Comments and Objections was published in the Federal Register on December 3, 1999.

The requested hearing was held in Arlington, Virginia, from January 5, 2000, through January 13, 2000, before Administrative Law Judge Gail A. Randall. At the hearing, each party called witnesses to testify and introduced documentary evidence. After the hearing, each party submitted Proposed Findings of Fact, Conclusions of Law and Argument. The Antitrust Division of the Department of Justice filed a brief as amicus curiae. On September 21, 2000, the Administrative Law Judge issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that the Deputy Administrator issue a regulation permitting the importation of NRMs and that he conditionally grant Johnson Matthey's application for registration as an importer of NRMs. Both Noramco and Mallinckrodt filed exceptions to the Administrative Law Judge's Findings. Johnson Matthey filed a response to the exceptions, Johnson Matthey, Noramco and Mallinckrodt also submitted Reply Briefs to the brief of the Antitrust Division.

On September 21, 2000, the Administrative Law Judge certified and transmitted the record to the Deputy Administrator of DEA. The record included the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, the exceptions filed by the parties, the brief filed by the Antitrust Division of the Department of Justice, the reply briefs, motions filed by all counsel, all of the exhibits and affidavits, and the transcript of the hearing sessions.

II. Preliminary Matters

A. Regulatory Context

Because Johnson Matthey is applying for both a renewal of its registration and permission to import, this proceeding is a combined adjudication and rulemaking. The rulemaking determines whether Johnson Matthey may lawfully import into the United States the Schedule II controlled substances raw opium and CPS pursuant to 21 U.S.C. 952(a). Johnson Matthey has the burden of proof, and must establish by a preponderance of the evidence that such a rule can be issued. In order to do this,

Johnson Matthey must show by a preponderance of the evidence that the raw opium and CPS that it intends to import are necessary to provide for medical, scientific or other legitimate purposes.

The adjudication determines whether DEA should grant Johnson Matthey's application for registration as an importer of the Schedule II controlled substances raw opium and concentrate of poppy straw. In accordance with the DEA Statement of Policy and Interpretation on registration of importers, 40 FR 43,745 (1975), the Deputy Administrator will not grant Johnson Matthey's application unless Johnson Matthey establishes that the requirements of 21 U.S.C. § 958(a) and § 823(a) and 21 C.F.R. 1301.34(b)–(f) are met to show that Johnson Matthey's plans are in the public interest. DEA has the discretion to determine the weight assigned to each of the factors that must be considered to determine whether Johnson Matthey's registration to import will be granted. MD Pharmaceutical, Inc. v. DEA, No. 95–1267, 1996 U.S. App. LEXIS 1229 (D.C. Cir. 1996) (unpublished opinion.)

B. The Record

Nearly two months after the hearing, Johnson Matthey filed a Motion to Reopen the Record. In the motion, Johnson Matthey asked the court to allow into evidence the Report of the International Narcotics Control Board (INCB) for 1999. Among other things, the report contained information concerning the world-wide supply of opiate raw materials and consumption of opiates. Both Mallinckrodt and Noramco filed oppositions to the motion. By Memorandum and Order of March 15, 2000, the Administrative Law Judge denied Johnson Matthey's motion.

In an adjudication, the Deputy Administrator issues his final order based on the record made before the Administrative Law Judge. The Deputy Administrator has the authority, however, to request that the Administrative Law Judge reopen the record and admit evidence that was not introduced in the hearing. The party seeking to introduce such evidence must show, however, that the evidence was previously unavailable and is relevant to the issues in dispute. *Immigration and Naturalization Service* v. *Abudu,* 485 Y.S. 94 (1988).

There is no requirement, however, that the decision regarding the issuance of a regulation be made solely on the record. In a rulemaking, the purpose of the procedure is to gather evidence. As a result, the informal rulemaking proceeding does not end with the same degree of finality as does a formal adjudication. The Deputy Administrator may consider evidence submitted after the close of the comment period. *See Hoffman-La Roche, Inc.,* v. *Kleindienst,* 478 F.2d 1, 13–15 (3rd Cir. 1973). Nonetheless, at some point the agency must make a decision, and it is free to ignore comments that were filed late.

By Memorandum and Order of March 15, 2000, the Administrative Law Judge denied Johnson Matthey's motion to reopen the record. In reaching her decision, she noted that the record already contained much information derived from the INCB, information that was highly disputed during the hearing. She also found that the exclusion of the report ''does not fundamentally alter the core issues presented in this proceeding.''

With respect to both the adjudication and rulemaking aspects of this matter, the Deputy Administrator will not permit a reopening of the record to include the INCB report. While it appears that the report was unavailable until after the hearing, the report's relevance seems questionable in light of the Deputy Administrator's final decision in this matter, and the similar and highly disputed evidence already in the record.

C. Designations of Confidentiality

Pursuant to a Protective Order issued by the Administrative Law Judge on December 2, 1999, Mallinckrodt and Noramco requested that portions of the transcript of the hearing of this matter be designated as ''confidential'' or ''highly confidential.'' After the hearing, the parties were provided an opportunity to file by motion requests for the specific marking of the transcript. Noramco filed a Motion for Designation of Confidentiality and Mallinckrodt filed its Confidentiality Designations. In response, Johnson Matthey filed an Objection to Noramco and Mallinckrodt's Proposed Confidentiality Designations. Mallinckrodt then filed a Response to Objection of Johnson Matthey Inc. to Noramco's and Mallinckrodt's Inc.'s Proposed Confidentiality Designations.

By order of December 21, 2000, the Administrative Law Judge ruled on these motions, granting some of the requested designations of confidentiality and denying others. The Deputy Administrator has reviewed the pleadings on this issue, and hereby adopts the Administrative Law Judge's December 21, 2000, order.

III. Final Order

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings and conclusions. The Deputy Administrator adopts the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge in their entirety. They are incorporated into this final order as though they were set forth at length herein. The adoption of the judge's opinion is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

A. The Rulemaking

As explained above, Johnson Matthey cannot be registered as an importer of NRMs unless the Deputy Administrator finds that Johnson Matthey will be allowed to import NRMs pursuant to 21 U.S.C. 952(a)(1). Because Johnson Matthey is the proponent of such a rule, it must establish by a preponderance of the evidence that such a rule can be issued.

21 U.S.C. 952 makes it unlawful to import controlled substances in Schedule I or II except that ''such amounts of crude opium, poppy straw, concentrate of poppy straw and coca leaves as the Attorney General finds to be necessary to provide for medical scientific or other legitimate purposes.'' Whether Johnson Matthey's importation of opium and poppy straw is ''necessary'' was highly disputed at the hearing of this matter.

Peter Bensinger, a former Administrator of DEA, testified that United States policy prohibits the cultivation or production of NRMs in the United States in favor of imports, in order to limit the potential diversion problems of domestic cultivation and production. Gerald Dumont, a consultant to the INCB, testified that he believed that the major suppliers of NRM would be willing to sell to Johnson Matthey, if registered. Mr. Dumont also believed that the registration of Johnson Matthey would not cause shortages, price increases or any change to the total U.S. allocation of NRMs. Dr. William Beaver, a physician and expert in pharmacology, testified that the derivatives manufactured from NRMs are necessary to the United States medical community, as there are medical demands that cannot be met by non-opiate narcotics. Dr. Beaver also testified that opiate pharmaceuticals have a long history of medical use and the medical community continues to rely upon opium-derived alkaloids rather than synthetic opiate analgesics.

These alkaloids and their semi-synthetic derivatives such as a hydromorphone, hydrocodone, and oxycodone are critical therapeutic agents today. Dr. Beaver concluded that morphine, codeine, hydromorphone, hydrocodone and oxycodone are necessary to the United States medical community.

Mallinckrodt and Noramco asserted that they have maintained an adequate and uninterrupted supply of opiate pharmaceuticals from their processing of opium and CPS. Therefore, in their opinion, Johnson-Matthey's importation of such substances is not ''necessary,'' as required by 21 U.S.C. § 952. They also argued that the statutory scheme required a full blown inquiry into the adequacy of competition among existing manufacturers.

As the Administrative Law Judge explained, the term ''necessary'' is not defined in the Controlled Substances Act. The ''necessary'' standard, however, has been employed since the inception of narcotics legislation. Moreover, the legislative history shows that the prohibition of 21 U.S.C. § 952 was intended to reduce diversion of illicit drugs, while the exception was intended to supply the drugs required by the medical community. There is nothing in the legislative history that would support any intention to limit the number of importers under the statute. Indeed, any such interpretation would mean that if the needs for NRMs could be satisfied by one company, no other companies would be allowed to import the raw materials. There is no evidence, however, that Congress intended this provision to create a monopoly for a single company. Nor does the legislative history show any concern with competition among NRM importers. Accordingly, for purposes of this rulemaking, the economic data supplied by the parties is not relevant.

Based upon the above, the Deputy Administrator finds that Johnson Matthey has met its burden of proof in showing that its proposed importation of NRMS is ''necessary'' to provide for legitimate medical purposes.

B. The Adjudication

Federal law prohibits the cultivation of the opium poppy in the United States, and also generally prohibits the importation of bulk narcotic alkaloids such as morphine and codeine. The NRMs raw opium and CPS therefore must be imported into the United States for purposes of extracting morphine and codeine for pharmaceutical use. Following the extraction of these alkaloids, the manufacturers convert them into active pharmaceutical ingredients (APIs), such as oxycodone and hydrocodone. These APIs are then sold to other manufacturers to produce either dosage formulations or other APIs. The formulated drugs are then sold to drug wholesalers or directly to health care entities.

Johnson Matthey, Noramco and Mallinckrodt are currently registered with DEA as bulk manufacturers of a number of Schedule I and II substances, including the Schedule II controlled substances oxycodone and hydrocodone. Noramco and Mallinckrodt are the only companies registered with DEA, however, as importers of NRMs and bulk manufacturers of codeine and morphine.

Since Johnson Matthey is not registered to import NRMs, it cannot manufacture its own codeine and morphine, but must purchase these compounds from Noramco and Mallinckrodt. In recent years, Noramco has been unwilling or unable to supply Johnson Matthey with all of the codeine and morphine that Johnson Matthey has requested. Johnson Matthey has applied with DEA to be registered as an importer of NRMs, so that the company can manufacture its own codeine and morphine. Noramco and Mallinckrodt oppose Johnson Matthey's application.

Pursuant to 21 U.S.C. 958a, and 823(a), DEA is required to register Johnson Matthey as an importer and manufacturer of Schedule I and II substances if the registration is ''consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. In 823(a)(1)–(6). See also 21 C.F.R. 1301.34(b)(1)–(6)(i). Accordingly, the Deputy Administrator will first consider United States obligations under international treaties, then each of the factors delineated in 21 C.F.R. 1301(b)(1)–(6)(i), as follows.[1]

1. Treaty Obligations

There is no evidence that the importation of NRMs by Johnson Matthey would be inconsistent with United States obligations under international treaties, conventions or protocols. Under the treaty Single Convention on Narcotic Drugs, 1961, the United States is obligated to take all necessary measures to ensure that the international movement of narcotics is limited to legitimate medical and scientific needs. Peter B. Bensinger, former Deputy Administrator of DEA, credibly testified that the primary goal of the Single Convention and relevant United States drug policy is to encourage production of NRMs only in countries that can control the illicit diversion of these substances. DEA has developed a quota system to meet, in part, the obligations of the United States under this treaty. This ''80/20 rule,'' which requires the United States to purchase at least 80 percent of its NRMs from India and Turkey, is designed to achieve the goal of the Single Convention treaty. There is no evidence that entry of Johnson Matthey into the market for importation of NRMs would contravene this rule.

2. Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate, medical, scientific, research or industrial channels, by limiting the importation of and bulk manufacture of such controlled substances to a number of establishments which can product an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific research, and industrial purposes.

As the Administrative Law Judge noted, DEA has previously interpreted identical language in the context of analyzing an application for manufacturing a Schedule I and Schedule II controlled substance as follows: ''The Drug Enforcement Administration of the United States Department of Justice, presently interprets the statute as requiring the registration of otherwise qualified applicants to manufacture any controlled substance as long as the total number of registrants remains within the effective control by the Administration. We believe that (this section of the statute) permits the Drug Enforcement Administration to restrict entry to a number of registrants constituting adequate competition only when actually necessary to maintain effective controls against diversion.'' Bulk Manufacture of Schedule I and II Substance, 39 Fed. Reg. 12,138 (DEA 1974).

Furthermore, DEA has written that, stated conversely, DEA is ''required to register an applicant who meets all the other statutory requirements, without regard to the adequacy of competition, if the Administration determines that registering another manufacturer will not increase the difficulty of maintaining effective controls against

[1] In this proceeding, Johnson Matthey, as the applicant, has the burden of proof of showing that the public interest will be served by its registration to import NRMs. 21 C.F.R. 1301.44(c). Noramco and Mallinckrodt, however, have the burden of proving and propositions of fact or law asserted by them in the hearing. *Id.; Roxane,* 63 Fed Reg. 55,891 (DEA 1998).

diversion.'' *Id.*6 Accordingly, the Deputy Administrator finds that if DEA determines that there would be no increased difficulty in controlling diversion, the requirements of this provision are satisfied, and an analysis of adequate competition is not required.

At the hearing, Noramco and Mallinckrodt attempted to show that Johnson Matthey's registration as an importer of NRMs would cause further diversion of controlled substances and a potential interruption in the supply of NRMs. Michael Misolovich, a Mallinckrodt executive, testified that if Johnson Matthey was inefficient in extracting narcotics from NRMs, its entry into the market would exaggerate legitimate demand, resulting in more cultivation of NRMs than is necessary and thereby increasing the risk of diversion. Richard A. Hoyt, another Mallinckrodt executive, testified that registration of Johnson Matthey could trigger a shortage of NRMs if Johnson Matthey were inefficient in processing NRMs.

The Deputy Administrator finds that neither Mallinckrodt nor Noramco offered any solid evidence in support of the view that registration of Johnson Matthey to import NRMs would cause increased diversion or a shortage of NRMs. Mr. Misolovich admitted that only basis for his allegation that Johnson Matthey would be inefficient in processing NRMs was based solely on the fact that Johnson Matthey had not processed NRMs in the past. Indeed, none of the evidence offered in support of these contentions rose above mere speculation. As noted above, Gerard Dumont, a gentleman with 30 years experience in the international market for NRMs, testified that the registration of Johnson Matthey would not cause shortages, price increases, or any change to the total U.S. allocation of NRMs. David Connor, an employee of Johnson Matthey with twelve years experience in purchasing NRMs on the world market, testified that supplied of NRMs from India, Turkey and other countries would be adequate to meet Johnson Matthey's needs. Mr. Connor testified further that Johnson Matthey's entry into the market would not result in an increase in the demand for NRMs, but would simply result in the displacement of NRMs from one buyer to another. Furthermore, the Deputy Administrator notes that neither Mallinckrodt nor Noramco has been unable to supply its customers with sufficient product during the ''shortages'' of NRMs over the past several years.

With regard to Johnson Matthey's efficiency in processing NRMs, Frank Stermitz, Ph.D., a professor of chemistry, testified credibly that the extraction of alkaloids from opium was a simple, uncomplicated and well established procedure known for 200 years, and that permitting Johnson Matthey to import NRMs would pose little danger to the world supply of NRMs. Other witnesses testified credibly that Johnson Matthey's registration as an importer of NRMs would not cause an increase in Indian production, but would simply redistribute the same amount of product among three, rather than two, companies.

Based upon the above, the Deputy Administrator finds that both Noramco and Mallinckrodt have failed to meet their burdens of proof to show that registration of Johnson Matthey as an importer of NRMs would increase diversion of controlled substances or cause an interruption in the supply of NRMs. Accordingly, the Deputy Administrator need not conduct an analysis of adequate competition.[2]

3. Compliance with applicable State and local law;

David M. Connor testified that Johnson Matthey has never been convicted of any offense relating to controlled substances under either Federal or State Law, and that Johnson Matthey complies with all New Jersey laws relating to controlled substances. There is nothing in the record to contradict this assertion.

4. Promotion of technical advances in the art of manufacturing these substances and the development of new substances.

Johnson Matthey has developed a patent that permits the manufacture of hydrocodone in a one-step process and has four other patent applications pending. It has also filed a patent application in Europe for the production of thebaine, a precursor to oxycodone. Thus it appears that Johnson Matthey promotes technical advances in the manufacturing of oxycodone and hydrocodone.

5. Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

David Conner testified without contradiction that Johnson Matthey has never been convicted of any offense relating to controlled substances under Federal or State law.

6. Past experience in the manufacture of controlled substances and the existence in the establishment of effective control against diversion.

Johnson Matthey has been registered by DEA as a manufacturer of Schedule I, II, and III controlled substances since 1985. Forrest F. K. Sheffy, Ph.D., a Johnson Matthey employee, testified that Johnson Matthey was founded in 1817 as a precious metals company, and has grown into a large, international corporation with businesses in numerous fields, including the manufacture of active pharmaceutical ingredients for sale to pharmaceutical companies. Mr. Sheffy also testified that Johnson Matthey today is a leader in the manufacture of controlled substances for use in pharmaceuticals.

A DEA Diversion Investigator (DI), testified that he conducted a 303 analysis of Johnson Matthey. The DI credibly concluded that Johnson Matthey's record keeping and security practices were in compliance with relevant law and regulation. DEA's Chief of the Drug Operations Section, Office of Diversion Control, credibly testified that his office found no reason why DEA should not grant the application of Johnson Matthey to import raw opium and CPS.

Johnson Matthey also hired former DEA agent, to conduct a review of the security of its physical plant and of its standard operating procedures. The former agent credibly testified that Johnson Matthey is in compliance with DEA regulations to prevent diversion with respect to the handling of controlled substances.

David Connor is responsible for Johnson-Matthey's compliance with DEA regulations. He previously worked for Noramco, and has 15 years experience in DEA compliance issues. At the hearing, he testified that Johnson Matthey is committed to the ''highest level of compliance with DEA regulations.'' Since he has worked for Johnson Matthey, there have been three on-site visits by DEA inspectors, without any violations. In the fourth quarter of 1998, DEA conducted an on-site inspection of the Johnson Matthey plant in New Jersey. At the end of the inspection the DEA investigator advised him that she had found no violations of DEA regulations, and since that time Johnson Matthey has received no notice of violations from DEA.

Accordingly, the Deputy Administrator finds that Johnson Matthey has had sufficient experience in the manufacture of controlled substances. The Deputy Administrator also finds that Johnson Matthey is in compliance with DEA regulations,

[2] The Deputy Administrator also finds that even if he had found that competition in the market for codeine phosphate and morphine sulfate was adequate, he would still find it appropriate to register Johnson Matthey as an importer of NRMs, since each of the other factors to be considered in determining the public interest weigh in Johnson Matthey's favor.

maintain effective controls against diversion of controlled substances and Johnson Matthey's importation of NRMs will not increase the risk of diversion of these substances for illicit uses.

7. Such other factors as may be relevant to and consistent with the public health and safety.

As the Administrative Law Judge noted, registration of Johnson Matthey as an importer of NRMs would also serve the public interest as further assurance that opiate pharmaceutical products such as oxycodone and hydrocodone will be available to the public. At present, all pharmaceuticals derived from NRMs in this country are manufactured by only two companies. Adding a third company would reduce the risk of supply problems in the event of regulatory recalls, fire, flood or other natural disasters.

8. Conclusion

Based upon the foregoing, the Deputy Administrator finds that it is in the public interest, as defined by 21 U.S.C. 823(a)(1)–(6) and 21 CFR 1304.34(b)(1)–(6)i to grant Johnson Matthey's application to be registered as an importer of NRMs.

C. Exceptions

Both Noramco and Mallinckrodt filed exceptions to the Administrative Law Judge's Recommended Ruling, Findings of Fact, Conclusions of Law and Decision. Johnson Matthey responded to those exceptions. Having considered the record in its entirety, including the parties' exceptions and responses, the Deputy Administrator finds no merit in Noramco and Mallinckrodt's exceptions, many of which concerned matters that were addressed at length at the hearing. The exceptions were extensive and are part of the record. Only some of the exceptions merit further discussion, and they will not be restated at length herein.

In its exceptions, Normaco contends that licensing Johnson Matthey to import NRMs will ''dramatically'' weaken the standards for such licensing. Noramco claims that granting Johnson Matthey a license before the company has demonstrated that it is immediately prepared to start processing NRMs will create a standard by which any company will be able to obtain a license to import NRMs. This argument has no merit. Johnson Matthey has not yet constructed a new facility to process NRMs, but plans to do so in the near future. Furthermore, Johnson Matthey has had extensive experience in manufacturing controlled substances. Moreover, DEA's licensing of Johnson Matthey will be contingent upon Johnson Matthey's providing to DEA, prior to the receipt of the first shipment of NRMs, sufficient information concerning its facilities and procedures.

Noramco also contends that the Administrative Law Judge failed to correctly balance the risk of diversion that will result from the licensing of Johnson Matthey to import NRMs. This argument also has no merit. On the contrary, the Administrative Law Judge made extensive findings concerning the issue of potential diversion. The Administrative Law judge correctly stated that both Mallinckrodt and Noramco, without offering any specific evidence, speculated that merely permitting another party to import NRMs increases the risk that those NRMs will be diverted, on both the national and international level. The Administrative Law Judge found that Johnson Matthey has had a great deal of experience in handling opiate-derived compounds, without any alleged violations of DEA security regulations, and the The DI testified at the hearing that he had inspected Johnson Matthey's facilities and concluded that its security plans and practices comport with DEA regulations. Accordingly, the Deputy Administrator finds that there is no evidence that the licensing of Johnson Matthey to import NRMs would result in diversion of controlled substances.

In its exceptions, Mallinckrodt contends that the Administrative Law Judge erred in her finding that Johnson Matthey intends to import both CPS and raw opium. As evidence of Johnson Matthey's alleged intent only to import CPS, Mallinckrodt points to the fact that Johnson Matthey has only allocated $10 million to building a new facility to process NRMs. With little discussion, Mallinckrodt's witnesses testified that a plant to process both CPS and raw opium would required two separate lines and would cost more than $10 million. Mallinckrodt failed to demonstrate, however, that Johnson Matthey would be unable to process both raw opium and CPS. The Deputy Administrator finds that Johnson Matthey is still in the preliminary stages of its importation and processing of NRMs. If it turns out that the projected costs are greater than expected, there is no evidence that Johnson Matthey would fail to allocate sufficient funds to process both raw opium and CPS. Indeed, Forrest K. Sheppy, a Johnson Matthey executive, testified that the company was committed to expending the necessary sums to install an appropriate manufacturing facility.

Mallinckrodt also contends that the Administrative Law Judge, in her determination that an analysis of adequacy of competition was not necessary in this matter, erred in applying a DEA policy statement that referred to the manufacturing, rather than the importation, of controlled substances. In the policy statement, DEA stated that it interpreted the language of 21 U.S.C. 823(a)(1) to permit DEA to restrict entry to a number of registrants constituting adequate competition only when actually necessary to maintain effective controls against diversion. Mallinckrodt's argument has no merit. As the Administrative Law Judge stated, she found the statement of policy ''instructive'' rather than ''determinative.'' Moreover, the policy statement interpreted the exact same standards at issue here. Pursuant to 21 U.S.C. 958, in determining whether a license to import is in the public interest, the Deputy Administrator must look to the standards applicable to manufacturers at 21 U.S.C. 823. Thus for purposes of determining whether the importation or manufacture of controlled substances is in the public interest, Congress, in enacting the statute, made clear that both importers and manufacturers are to be treated alike in determining the public interest will be served.

IV. Conclusion

The Deputy Administrator concludes that, except for one factor, Johnson Matthey has satisfied all of the factors to be considered in both a rulemaking and adjudication to permit registration of Johnson Matthey to import NRMs. The unsatisfied factor concerns the fact that Johnson Matthey's proposal to import NRMs is not now adequately supported by concrete pans or proposals regarding the location and type of processing facility that it intends to use in processing NRMs. Johnson Matthey has neglected to produce sufficient evidence to show that its intended facility will substantially comply with requirements. The Deputy Administrator agrees with the Administrative Law Judge that this is not an insurmountable obstacle, however, and pursuant to the authority vested in him by 21 U.S.C. 952 and 958 and 28 CFR 0.100(b), hereby grants Johnson Matthey a conditional registration until such time as Johnson Matthey's facilities are complete and DEA can complete its requisite physical security and record keeping evaluation to ensure Johnson Matthey's continued protection of NRMs against diversion. The Deputy Administrator also finds that Johnson Matthey should provide DEA with a timetable of its proposed activities and submissions so that DEA

may plan for the prompt scheduling of its inspection and review activities. This decision is effective July 8 2002.

Dated: May 22, 2002.

John Brown III.

Deputy Administrator.

[FR Doc. 02–14218 Filed 6–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS published a notice in the **Federal Register** on March 4, 2002 at 67 FR 9782. The notice allowed for a 60-day public review and comment period on the extension of a currently approved information collection. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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 form of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–05); Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection of information is used by the INS to determine participants in the Pilot Immigration Program provided for by section 610 of the Appropriations Act. The INS will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: May 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–14198 Filed 6–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: guidelines on producing master exhibits for asylum applications.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2002 at 67 FR 12584, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs 725—17th Street, NW., Washington, DC 20530; Attention: Department of Justice Desk Officer, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Guidelines for Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–04), Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-Profit Institutions. Master Exhibits area means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW, Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: May 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–14199 Filed 6–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2002 at 67 FR 12584, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Washington, DC 20530; Attention: Department of Justice Desk Officer, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Emergency Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–06), Office of General Counsel, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with immigration emergencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D

Street, NW, Suite 1600, Washington, DC 20530.

Dated: May 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–14200 Filed 6–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Data Relating to Beneficiary of Private Bill; Form G–79A.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2002 at 67 FR 12586, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow as additional 30 days for public comments. Comments are encouraged and will be accepted until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Washington, DC 20530; Attention: Department of Justice Desk Office, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–79A. Investigation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW, Suite 1600, Washington, DC 20530.

Dated: May 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Policy Directives and Instwructions Branch.

[FR Doc. 02–14201 Filed 6–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 24, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). a copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* 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;

* 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;

* Enhance the quality, utility, and clarity of the information to be collected; and

* 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.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of currently approved collection.

Title: Forging Machines, Inspection Certification Records—29 CFR 1910.218(a)(2)(i) and (a)(2)(ii).

OMB Number: 1218–0228.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: Bi-weekly.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 27,700.

Number of Responses: 1,440,400.

Average Time per Response: 10 minutes (.17 hours).

Annual Burden Hours: 244,868.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Forging Machines Standard (i.e., ''the Standard'') specifies two paperwork requirements. The following section describes who uses the information collected under each requirement, as well as how they use it.

Inspection of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and keep a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected.

Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, thereby assuring that they will operate properly and safely, and prevent impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–14192 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 31, 2002.

The Department fo Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E–Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* 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;

* 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;

* Enhance the quality, utility, and clarity of the information to be collected; and

* 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.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Standard on the Control of Hazardous Energy Sources (Lockout/Tagout)—29 CFR 1910.147.

OMB Number: 1218–0150.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; and Federal Government.

Frequency: On occasion; Initially; and Annually.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 2,351,014.

Number of Responses: 94,561,759.

Average Time per Response: Varies considerably depending on establishment.

Annual Burden Hours: 2,450,698.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The collections of information contained in 29 CFR 1910.147 are needed to reduce injuries and deaths in the workplace that occur when employees are engaged in maintenance, repair, and other service-related activities requiring the control of potentially hazardous energy.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–14193 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; National Advisory Committee for the North American Agreement on Labor Cooperation, Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act and Article 17 of the North American Agreement on Labor Corporation, the Secretary of Labor has determined that the renewal of the charter of the National Advisory Committee on the North American Agreement for Labor Cooperation (the Advisory Committee) is in the public interest. The current charter expired on November 10, 2001.

The Advisory Committee provides advice to the Department of Labor on matters pertaining to the administration and implementation of the North American Agreement on Labor Cooperation, the labor supplemental accord to the North American Free Trade Agreement (NAFTA). These include but are not limited to the following: (1) Improving working conditions and living standards in each signatory's territory, (2) encouraging cooperation to promote innovation and rising levels of productivity and quality, (3) encouraging the publication and exchange of information to enhance the understanding of laws and institutions governing labor in each signatory's territory, and (4) promoting compliance with, and effective enforcement by each signatory of, its labor laws.

The Advisory Committee will meet at least two times a year and more often as necessary. It is comprised of twelve

members, four representing the labor community, four representing the business community, two representing academia and two representing the public. None of these members shall be deemed to be employees of the United States.

The Advisory Committee reports to the Secretary of the National Administration Office. It functions solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the charter of the National Advisory Committee for the North American Agreement on Labor Cooperation. Such comments should be addressed to Lewis Karesh, Deputy Secretary, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210, telephone (202) 693–4900.

Signed at Washington DC, the 31st day of May, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–14195 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor: Request for Comment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: On May 1, 2002, the Department of Labor (DOL) published draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by DOL in the **Federal Register** (67 FR 21776–21777). These guidelines are available for public comment on the DOL Web site: *http://www2.dol.gov/cio/programs/infoguidelines/guidelines.htm*

This notice announces an extension of the May 31, 2002, comment deadline to June 30, 2002.

DATES: Comments must be received on or before June 30, 2002.

ADDRESSES: Comments on the draft guidelines must be submitted in writing by postal mail, fax, or e-mail to the Assistant Secretary for Administration and Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Mrs. Theresa O'Malley, fax number (202) 693–4228, or e-mail *mailto:Omalley_Theresa@dol.gov.* Respondents are encouraged to submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Mrs. Theresa M. O'Malley, Executive Officer, Information Technology Center, telephone (202) 693–4216 (this is not a toll-free number), fax number (202) 693–4228, or e-mail *mailto:Omalley_Theresa@dol.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2002, the Office of Management and Budget (OMB) published a **Federal Register** Notice (67 FR 8452–8460) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication. The guidelines state that each agency must prepare a draft report, no later than May 1, 2002 (as amended, **Federal Register** Notice [67 FR 9797] March 4, 2002), providing the agency's draft information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information including statistical information disseminated by the agency. This report must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. Each agency must publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment. Following this public comment process, agencies are required to submit a revised draft report to the Office of Management and Budget on or before August 1, 2002.

The DOL has posted the draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Department of Labor on the DOL website as referenced above in the Summary section of this notice.

Signed at Washington, DC, this 31st day of May 2002.

Patrick Pizzella,

Assistant Secretary for Administration and Management, Chief Information Officer.

[FR Doc. 02–14194 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0230(2002)]

Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified for aerial lifts by its Vehicle-Mounted Elevating and Rotating Work Platforms Standard (29 CFR 1910.67). The paperwork provision of the Vehicle-Mounted Elevating and Rotating Work Platforms Standard specifies requirements for maintaining and disclosing the manufacturers' certification records for modified aerial lifts. The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that aerial lifts are inspected and/or tested after modification to ensure they are in safe operating condition.

DATES: Submit written comments on or before August 5, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0230(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collection specified by the Aerial Lifts Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http;//www.osha.gov,* and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork

and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden in correct.

The Standard specifies one paperwork requirement. The following section describes who uses the information collected under the requirement, as well as how they use it. The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

Manufacturer's Certification of Modificaitons (paragraph (b)(2)). The standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that the modified aerial life was inspected and/or tested after the modification and that the aerial lift is safe to use, thereby preventing failure while employees are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirement specified by the Aerial Lifts Standard (29 CFR 1910.67). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information-collection requirement.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Aerial Lifts Standard (29 CFR 1910.67).

OMB Number: 1218–0230.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number off Respondents: 900.

Frequency of Recordkeeping: On occasion.

Average Time per Response: 3 minutes (.05 hour).

Total Annual Hours Requested: 45.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on June 3, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–14215 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10959, et al.]

Proposed Exemptions; Adams Wood Products, Inc. Profit Sharing Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in

accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Adams Wood Products, Inc. Profit Sharing Plan (the Plan),

Located in Morristown, Tennessee

[Application No. D–10959]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed non-interest bearing loan (the Loan) by Adams Wood Products, Inc. (AWP), the Plan sponsor, to the Plan to reimburse the Plan for losses incurred concerning past investments by the Plan in certain promissory notes (the Notes); and (2) the potential repayment by the Plan to AWP of certain moneys if the Plan recovers any of the investments in the Notes. This proposed exemption is subject to the following conditions:

(a) The Plan pays no interest nor incurs any other expense relating to the Loan;

(b) The amount of the Loan includes the following:

(1) $340,187.38, which represents the amount due on the consolidated note (the Consolidated Note) on June 30, 2000;

(2) opportunity costs as follows: (a) The amount due on the Consolidated Note from June 30, 2000, the last date when the Plan received interest on the Consolidated Note to January 26, 2001, the date when AWP placed funds in Certificates of Deposit (CDs); and (b) an additional amount yet to be determined to provide the Plan with an identical rate of return as AWP received as a result of AWP's investment in the CDs for the period between January 26, 2001 and the date the Plan receives the Loan amount; and

(3) $4,630.84 to reimburse the Plan for all interest on the 1st note and 2nd note, due respectively, on April 20, 2001 and April 15, 2002.

(c) Any repayment by the Plan is restricted solely to the amount, if any, recovered by the Plan with respect to the Loan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan, sponsored by AWP, a Tennessee subchapter S corporation, which is engaged in the production of wood components for furniture. As of September 30, 2000, the Plan had total assets of approximately $828,142.89 with approximately 68 participants and beneficiaries. The only person having investment discretion over the assets involved in the proposed transaction is the trustee of the Plan, Larry Swinson, who is the sole limited partner of AWP.

2. As of December 31, 1999, the Plan held the Notes as part of its investment portfolio. The value of the Notes is $340,187.38 or 41% of the Plan's assets. The Plan invested in the Notes based on the advice of a benefits advisor. The fiduciary to the Plan found the Notes to be attractive investments for the Plan in light of the fact that they were at a fixed rate and the Notes had a rate of return that was very attractive at the time they were purchased.

The Plan purchased the 1st Note from the issuer, an unrelated third party with respect to the Plan, on June 20, 1997 for $100,000 with a 12% interest rate, with BFM Leasing serving as the issuer of the Note. The Plan received $58,644.85 in principal with a principal balance remaining of $41,355.15 and received interest in the amount of $24,144.95 for the 1st Note. The 1st Note was secured by auto leases with various corporate entities. The terms of the Note called for the payment of principal and interest on or before April 20, 2001.

The Plan purchased the 2nd Note from the issuer, an unrelated third party with respect to the Plan, on April 15, 1998 for $55,000 with a 10% interest rate, with BFM Leasing serving as the issuer of the note. The Plan received $13,041.99 in principal, with a principal balance remaining of $41,958.01 and received interest in the amount of $9,385.81 for the 2nd Note. The 2nd Note also was secured by auto leases with various corporate entities. The terms of the Note called for the payment of principal and interest on or before April 15, 2002.

The Plan purchased the 3rd Note from the issuer, an unrelated third party with respect to the Plan, on July 5, 1999 for $120,000 with a 12% interest rate, with BFM Leasing serving as the issuer of the Note. The Plan received $8,876.91 in principal, with a principal balance remaining of $111,123.09 and received interest in the amount of $10,658.32 for the 3rd Note. The 3rd Note was secured by leases with various corporate entities. The terms of the Note called for the payment of principal and interest no later than July 5, 2003.

The Plan purchased the 4th Note from the issuer, an unrelated third party with respect to the Plan, on December 31, 1999 for $150,000 with a 10.5% interest rate, with Land Oak Capital serving as the issuer of the Note. Land Oak Capital and BFM Leasing are related parties. The Plan received $4,278.24 in principal, with a principal balance remaining of $145,721.76 and received interest in the amount of $4,804.39 for the 4th Note. The 4th Note however, was unsecured. The terms of the Note called for payment of principal and interest no later than December 31, 2003.

3. In the spring of 2000, the Plan agreed to the four notes being consolidated into the Consolidated Note for $340,187.38.[1] The Interest rate on the Consolidated Note was 10%. The Consolidated Note was not secured. The Notes were consolidated because the debtor encountered financial difficulty and as a result it was necessary to restructure the Notes into the Consolidated Note that called for periodic payments of interest only with principal due on April 1, 2005, at the end of the Consolidated Note.

4. On September 29, 2000, the debtor informed the Plan that due to fraud on the debtor by another company, there was a significant probability that the debtor might default on the Consolidated Note. As a result, the Plan was given two choices: (1) Keep the Consolidated Note, or (2) exchange the Consolidated Note for another new note, which also would be unsecured. The

[1] The Department notes that ERISA's general standards of fiduciary conduct would apply to the Plan's acquisition and holding of the Notes and the Consolidated Note. The Department expresses no opinion herein as to whether the failure to secure collateral for the 4th note or the Consolidated Note by the Plan violated section 404(a) of the Act. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries in a prudent fashion, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan.

Plan did not deem it advisable from a fiduciary standpoint or otherwise to exchange the Consolidated Note for a new note. For that reason, the Plan chose not to exchange the Consolidated Note for a new note.

5. Accordingly, AWP proposes to make the Plan whole by making an interest-free loan to the Plan for:

(1) $340,187.38, which represents the amount due on the Consolidated Note as of June 30, 2000;

(2) opportunity costs as follows: (a) $16,571.63,[2] which represents interest due on the Consolidated Note from June 30, 2000, the last date when the Plan received interest on the Consolidated Note to January 26, 2001, the date when AWP purchased CDs; [3] and (b) an additional amount starting January 26, 2001 to provide the Plan with a rate of return on the $356,759.01 ($340,187.38 + 16,571.63) = $356,759.01) based on the continued investment by AWP in the CD's and ending on the date the Plan receives the complete Loan amount; and

(3) $4,630.84, which reimburses the Plan for all interest on the 1st Note and 2nd Note, due respectively, on April 20, 2001 and April 15, 2002.

6. The Loan will be evidenced by a promissory note and all proceeds will be paid to the Plan within 30 days of publication in the **Federal Register** of the grant of this exemption.

7. The Loan will be repaid only to the extent of any amount recovered by the Plan with respect to the Consolidated Note. The potential Loan obligation on the part of the Plan serves the legitimate purpose of preventing a ''double recovery'' by the Plan.

8. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Plan pays no interest nor incurs any other expense relating to the Loan;

(b) The amount of the Loan includes the following:

(1) $340,187.38, which represents the amount due on the Consolidated Note on June 30, 2000;

(2) opportunity costs as follows: (a) the amount due on the Consolidated Note from June 30, 2000, the last date when the Plan received principal and interest on the Consolidated Note to January 26, 2001, the date when AWP placed funds in CDs; and (b) an additional amount yet to be determined to provide the Plan with an identical rate of return as AWP received as a result of AWP's investment in the CDs for the period between January 26, 2001 and the date the Plan receives the Loan amount;

(3) $4,630.84 to reimburse the Plan for all interest on the 1st note and 2nd note, due respectively, on April 20, 2001 and April 15, 2002; and

(c) Any repayment by the Plan is restricted solely to the amount, if any, recovered by the Plan with respect to the Consolidated Note.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Mr. Khalif Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Banc Funds Company, LLC (TBFC) Located in Chicago, IL

[Application No. D–11083]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) [4]

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the purchase or redemption of interests in the Banc Fund VI L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Partnership, where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc VI, L.P. (MidBanc VI), which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

This proposed exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the Partnership has total assets that are in excess of $50 million.

(c) No Plan may invest more than 10 percent of its assets in the Partnership, and the interests held by the Plan may not exceed 25 percent of the assets of the Partnership.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the Partnership.

(f) An Independent Fiduciary which expresses further interest in the Partnership receives a copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the Partnership, the Independent Fiduciary is—

[2] The calculated amount of interest due on January 26, 2001 (the date the first CD was purchased) was formulated by multiplying the amount due on the Consolidated Note on June 30, 2000, $340,187.38, by the interest rate on the Consolidated Note at 10% per annum times a fraction with the numerator being the number of days from June 30, 2000 to January 26, 2001 and the denominator being 365 (representing the number of days within a year).

[3] The CDs accrued interest at the rate of 5.35% per annum. The first CD was purchased on January 26, 2001 for $185,000 and the second CD was acquired on January 31, 2001 (the Original CDs) for the balance owed to the Plan on that date. The Original CDs matured at the end of April 2001 and have been reinvested in two three month CDs.

[4] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing an interest in the Partnership as a limited partner (the Limited Partner) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Partnership.

(h) Each Plan receives the following written disclosures from the General Partner with respect to its ongoing participation in the Partnership:

(1) Within 90 days after the end of each fiscal year of the Partnership as well as at the time of termination, an annual financial report containing a balance sheet for the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership and/or the General Partner should be terminated as well discuss any aspect of the Partnership and the agreements promulgated thereunder with the General Partner.

(j) During each year of the Partnership, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries of participating Plans to discuss matters concerning the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the Partnership as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser (the Independent Appraiser).

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio (the Portfolio), the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliated thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard,

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be withdrawn before December 31, 2007, which represents the end of the Acquisition Phase (the Acquisition Phase) for the Partnership, and not until Plans have received distributions equal to 100 percent of their capital contributions made to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the Partnership.

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions.

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position.

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner.

(2) The tax distributions are deducted from the Performance Fee.

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

(4) The General Partner provides the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in section (q)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(q)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''TBFC'' means The Banc Funds Company, LLC and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An ''affiliate'' of TBFC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TBFC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An ''Independent Fiduciary'' is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of the Limited Partner's interest in the Partnership or an investment manager.

(e) The term ''Portfolio Companies'' include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities (together, the Bank Companies), and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies (together, the Financial Services Companies).

(f) The term ''net realized gains'' refers to the excess of realized gains over realized losses.

(g) The term ''net realized losses'' refers to the excess of realized losses over realized gains.

(h) The term ''net unrealized losses'' refer to the excess of unrealized losses over unrealized gains.

(i) The term ''net unrealized gains'' refers to the excess of unrealized gains over unrealized losses.

For a gain or loss to be ''realized,'' an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be ''unrealized,'' the Partnership asset must increase or decrease in value but not be sold.

Preamble

On September 22, 1993, the Department granted PTE 93–63 (58 FR 49322), a temporary exemption which was effective for a period of eight years from the date of the grant. PTE 93–63 permitted a series of transactions relating to the (a) sale by the Bank Fund III Group Trust (the BF III Group Trust) in which Plans invested, of certain securities which had been issued by Bank Companies and held in the BF III Group Trust's Portfolio, to a party in interest with respect to a Plan, where the party in interest proposed to acquire or merge with the Bank Company that issued such securities. In addition, PTE 93–63 permitted the BF III Group Trust to purchase Bank Company securities from the Midwest Bank Fund I Limited Partnership (MBF I LP) and the Midwest Bank Fund II, Limited Partnership (MBF II LP), two entities organized by The Chicago Corporation (TCC), the company from which TBFC was spun off. Further, PTE 93–63, allowed Plans investing in the BF III Group Trust to pay a performance fee to TCC and subsequently to TBFC.

On March 5, 1997, the Department granted PTE 97–15 at 62 FR 10078. PTE 97–15, which is still in effect, permits the Banc Fund IV Group Trust (the BF IV Group Trust) in which Plans invest, to sell certain securities that are held in the BF IV Group Trust Portfolio to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company or a financial services company. In addition, PTE 97–15 permitted TCC (and currently permits TBFC, which was spun-off from TCC on April 30, 1997) to receive a Performance Fee from Plans investing in the BF IV Group Trust.

On August 10, 2000, the Department granted PTE 2000–37 at 65 FR 49018. PTE 2000–37 permits the purchase or redemption of interests in the Banc Fund V, L.P. (BF V) by Plans investing in the Banc Fund V Group Trust (the BF V Group Trust), where TBFC, a party in interest with respect to such Plans, is the general partner of MidBanc V, L.P., which is, in turn, the general partner of BF V. In addition, PTE 2000–37 permits the sale, for cash or other consideration, by BF V, of certain securities that are held as assets of BF V, to a party in interest with respect to a Plan participating in BF V through the BF V Group Trust, where the party in interest proposes to acquire or merge with a bank company or a financial services company that issued the securities. Further, PTE 2000–37 permits TBFC to receive a Performance Fee from Plans investing in the Partnership through the BF V Group Trust.[5]

The pooled investment vehicle that is described herein is similar to five investment funds that were organized by TCC or TBFC in 1986, 1989, 1993, 1996 and 1998 and described in PTEs 93–63, 97–15 and 2000–37. As noted above, these vehicles have been operated by TCC and more recently, by TBFC.

Summary of Facts and Representations

1. TBFC is a Chicago, Illinois-based investment advisory firm founded in 1997 as a spin-off from, and by the individuals who managed the financial services company advisory division of TCC.[6] TBFC is a registered investment adviser under the Investment Advisers Act of 1940, as amended, and it has a single line of business. TBFC currently provides institutional investors with investment management services through BF IV and BF V and it acts as a fiduciary with respect to these clients. TBFC currently manages $126.2 million in assets of plans that are covered under the Act, $195 million in the assets of

[5] In 1986, TCC organized the MBF I LP. The general partners of MBF I LP were two partnerships (MidBanc I and MidBanc II), whose general partners were corporate affiliates of TCC and whose limited partners were members of TCC's staff. Less than 25 percent of the assets of MBF I LP were provided by Plans. On December 31, 1994, MBF I LP was liquidated.

In 1989, TCC organized the MBF II LP. This partnership had the same general partners as MBF I LP. Also, less than 25 percent of the assets of MBF II LP were provided by Plans. On December 31, 1997, MBF II LP was liquidated.

Finally, in 1993, TCC completed the organization of Banc Fund III (BF III) which was structured as both a limited partnership and a group trust.

In 1996, TCC organized Banc Fund IV (BF IV) as a limited partnership and as a group trust. Each entity has or had investment policies and strategies similar to the proposed investment vehicle (i.e., the Partnership).

[6] During 1997, TCC's parent was acquired by ABN AMRO North America, Inc., a subsidiary of ABN AMRO Bank N.V., a global bank headquartered in the Netherlands. The acquisition did not involve the purchase of the assets of TCC's parent and TCC retains its separate corporate identity.

governmental plans and $128.8 million in non-Plan assets.

TBFC's relevant specialty is its expertise in the financial services and banking industries. In this regard, TBFC employees provide management, investment and capital formation services to collective investment vehicles which invest in commercial banks and other financial institutions and expend significant resources to research specific financial institutions.

As described below, TBFC requests an administrative exemption from the Department with respect to the purchase or redemption of interests in the Partnership by Plans investing in the Partnership, where TBFC, a party in interest with respect to such Plans, is the general partner of MidBanc VI, which is, in turn, the General Partner of the Partnership. In addition, TBFC requests exemptive relief to permit the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership, where the party in interest proposes to acquire or merge with the Portfolio Company that issued such securities. Further, TBFC requests that the exemption apply to the General Partner's receipt of a Performance Fee from the Partnership that is based upon a debit account structure (i.e., the Performance Fee Account) which will keep track of the General Partner's compensation for managing the Partnership but will not represent actual dollars that are reserved or set aside for the General Partner.

2. The Partnership is intended to be a ''pooled fund'' as that term is defined in 29 CFR 2570.31(g). All employee benefit plan investors that are Limited Partners of the Partnership must evidence the following characteristics in order to acquire interests as Limited Partners: (a) Each investor must commit to making at least $2 million in initial capital contributions; (b) each Plan must have at least $50 million in assets; and (c) no Plan may invest more than 10 percent of its assets in interests in the Partnership and such interests held by a Plan may not exceed 25 percent of the Partnership; and (e) no Plan may subscribe for a Limited Partner's interest which, when aggregated with all other Plan assets that are subject to investment funds or separate accounts managed by TBFC and/or its affiliates, is valued in excess of 25 percent of such Plan's net assets. The Partnership will not be organized unless $50 million in capital contribution commitments is subscribed for by investors.

3. Approximately 5–10 Plans may invest in the Partnership. An additional 8 to 12 non-Plan investors are also expected to participate in the Partnership. However, no Plan may invest more than 25 percent of its assets in the Partnership and every other pooled investment vehicle sponsored by TBFC, as measured on the date of such investment. Each participating Plan must invest a minimum of $2 million in the Partnership. Further, no Plan benefiting employees of TBFC will be permitted to invest in the Partnership.[7]

4. Pooled investments for Plans investing in the Partnership will be made through the Partnership. The maximum capital contribution commitment of the Partnership will be $350 million. The primary purpose of the Partnership is to engage in the business of providing capital to, acquiring equity and debt interests in, and making available consultative services to Portfolio Companies such as Bank Companies and Financial Services Companies having assets under $10 billion. The Partnership may also invest in demutualizing thrift institutions, business services companies (providing outsourcing, transaction processing and other information management services to Financial Services Companies), insurance contracts, short term investments, derivatives (for hedging purposes only) and covered put and call options. Further, the Partnership may make loans of securities. In short, it is anticipated that the Partnership will share the same basic investment strategy as was held by MBF I, MBF II, BF III, BF IV and BF V, and in many ways, the operations and fee structures of these entities.[8]

5. The General Partner of the Partnership will be MidBanc VI LP. The general partner of MidBanc VI LP will be TBFC and the Limited Partners will be individuals employed by TBFC. The General Partner will acquire a one percent interest in the Partnership, for cash. As described later in this proposed exemption, all fees that are paid to the General Partner and/or its affiliates will be paid by the Partnership.

The principal place of business of the Partnership will be 208 LaSalle Street, Chicago, Illinois or at such other location as the General Partner may select. The Partnership is expected to terminate on December 31, 2011, unless terminated sooner.

6. Some of the Limited Partners of the Partnership will consist of non-Plan investors, which will acquire, by making capital contributions in cash directly to the Partnership, a Limited Partner's interest in such Partnership. However, as noted above, other Limited Partners will be Plans covered under the provisions of the Act, and governmental plans. In the same manner, these Plans will acquire, for cash, a Limited Partner's interest in the Partnership. It is expected that upon the creation of this structure, the Plans will own a 75 percent equity interest in the Partnership. Because none of the exceptions to the plan asset regulations will apply, the assets of the Partnership will constitute plan assets.[9]

The General Partner will not have any control over the decision to cause any Plan to invest in the Partnership. Under these circumstances, the decision to participate in the Partnership will be made by a Plan fiduciary which is independent of the General Partner. In each instance, even though the General Partner may present a Plan fiduciary with information concerning investment in the Partnership, the Plan fiduciary who makes the investment decision will agree not to rely on the advice of the General Partner as the primary basis for a Plan's investment, and the Independent Fiduciary will be specifically required to do so in every instance.[10] The General Partner assumes

[7] Although TBFC will not be affiliated with, or under the control of, or controlling, any participating Plan, it is likely that certain Plans will have a preexisting relationship with TBFC in the form of an investment in BF IV or BF V, investment vehicles managed by TBFC.

[8] According to TBFC, there are circumstances militating against investments by the Partnership in either BF IV or BF V. First, the Partnership will be structured as a separate investment entity apart from BF IV and BF V. BF IV, BF V and BF VI (collectively, the Funds) will all have somewhat different charters with respect to what investments each can make. Second, many companies in which the Funds invest are (or will be acquired) by larger banks within three years of the particular Fund making an investment. Therefore, something acquired by an earlier Fund is unlikely to be acquired by a later Fund. Third, the Partnership will not come into existence until BF IV and BF V are fully invested, so concurrent purchases are deemed impossible. Fourth, BF IV may complete its wind-up and termination before the Partnership becomes invested. Fifth, there is an outright prohibition against the Partnership buying investments in BF IV and BF V and also against investing directly in BF IV and BF V. Sixth, the Partnership will invest in an area in which the availability of Portfolio Company securities will be extremely limited. For the Partnership to invest in any of the same investment vehicles as BF IV and BF V, it would mean that none of the investment circumstances described above would apply.

[9] See 29 CFR 2510.3–101(a)(2)(ii) and (f).

[10] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the Partnership by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to invest in the Partnership. The Department expects that an Independent Fiduciary, prior to investing in the Partnership, to fully

that a Plan will invest in the Partnership only if the fiduciaries of the Plan determine that investment performance is anticipated to be superior.[11]

7. The contribution provisions for the Partnership will be identical as between Plan and non-Plan investors. For example, capital calls for Plans participating in the Partnership will be concurrent and in the same proportional amount as are capital calls by the Partnership from Limited Partners that are not Plans.[12] The General Partner may call any amount of the capital commitment upon 7 days' advance written notice, and in increments of 3 percent or more, when cash is needed to fund the acquisition of Portfolio Company securities by the Partnership. However, there are two limitations upon the General Partner's power to call contributions. First, no more than 50 percent of the contribution commitment may be called in any twelve month period. Second, the General Partner cannot call any contributions after the sixth anniversary date of the inception of the Partnership (the period running from the date on which initial capital contributions are made to such sixth anniversary date being referred to as ''the Acquisition Phase'').

If an investing Plan cannot or does not meet a capital call, the Partnership Agreement provides that ten days after the investor receives notice of default on a capital call, the General Partner may (a) permit the investor's continued participation in the Partnership with a commensurate reduction in both the investor's proportionate interest in such Partnership and aggregate size of the Partnership; [13] (b) declare the investor's entire capital commitment due and pursue collection of the same; or (c) expel, at fair market value, the defaulting investor and offer its interest in the Partnership first to the non-defaulting investors and then to non-investors who are qualified to invest in such Partnership. In making the choice between these alternatives, it is represented that the General Partner will be guided by then-current investment strategies and the best interest of the non-defaulting investors.

8. The terms of the Partnership control the duties and authority of the General Partner. For example, the General Partner, at its own expense, will provide the Partnership with personnel who are able to undertake the investment strategies for these entities as well as perform their clerical, bookkeeping and administrative functions. In addition, the General Partner, at its own expense, will provide the Partnership with office space, telephones, copying machines, postage and all other necessary items of office services. Further, the General Partner will control proxy voting on all Portfolio securities.[14] The Partnership Agreement permits the General Partner to allocate securities transactions to broker-dealers of its choice.

The General Partner will prepare, or cause to be prepared on behalf of the Partnership, the following reports: (a) annual audited financial statements; and (b) quarterly unaudited financial statements. In addition, the General Partner will keep the accounts of the Partnership.[15]

9. Under the Partnership Agreement, two types of fees will be payable to the General Partner by the Partnership. These fees are a management fee (the Management Fee) and the Performance Fee, the components of which are described below.

The General Partner's Management Fee is payable as a percentage of the aggregate capital contributions to the Partnership. The fee will be equal to 5 percent of the first $20 million in capital contributions, 1.79 percent of the next $280 million of capital contributions and 2 percent on amounts in excess of $300 million. On average, the fee will not exceed 2 percent of committed capital when all capital is contributed, even if the Partnership is capitalized at less than $300 million.[16]

Although Limited Partners will receive distributions from the Partnership throughout its duration, if, as a result of distributions to the Limited Partners, paid-in capital contributions are reduced to 50 percent or less of the original aggregate capital contributions to the Partnership after December 31, 2008, the Management Fee will be reduced to 70 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved. Upon the return to the Limited Partners of capital contributions so as to reduce their capital contributions to 25 percent or less of the total capital contributions paid-in, the Management Fee will be reduced to 50 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved.

10. In addition to the Management Fee, the General Partner[17] will be entitled to receive the Performance Fee, which will accrue annually in a debit account (i.e., the Performance Fee Account) between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. As noted above,

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understand all aspects of such investments following disclosure by the General Partner of all relevant information.

[11] The Department is not expressing an opinion on whether the Trustee or the General Partner would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a Plan's investment in the Partnership. The Department is also not proposing relief for the rendering of investment advice in connection with the acquisition of interests in the Partnership.

[12] It is represented that capital calls will be handled as follows:

On the same day, the General Partner will notify all Limited Partners, including Plan investors that capital is being called. All investors will have 7 days to forward the appropriate amount of cash.

As a matter of practice, all Limited Partners will wire their contributions to the Partnership on the same day.

All investors' contributions will be credited to the Partnership's Capital Account.

The General Partner will then utilize the Partnership's Capital Account to acquire the appropriate securities until the Partnership account is exhausted, at which time, another capital call will be made.

[13] Reductions in a Limited Partner's participations are based upon the relative amount of capital contributions that are omitted. For example, if a Limited Partner subscribes for a 10 percent interest in the Partnership and neglects to honor 25 percent of its commitment, the Limited Partner will only have a 7.5 percent interest in the Partnership if it is permitted to continue its investment.

[14] The Department is not providing exemptive relief herein for any prohibited transactions that may arise as a result of proxy voting on the part of the General Partner. The Department also notes that the general standards of fiduciary conduct promulgated under the Act would apply to such voting practices.

[15] Some examples of the types of accounts that will be maintained by the Partnership for each Limited Partner are (a) the Capital Account, which reflects the original capital paid into the Partnership by the Limited Partner and any adjustments thereto; (b) the Income Account, to which will be credited income, interest, dividends, fees for services (i.e., consulting services provided by the Partnership to financial institutions) and any other income items (other than gains or losses on the sale or other disposition of securities or other assets and other than income from high yield investments) and to which will be debited any expenses of the Partnership other than those which are to be taken into account to determine gains and losses; and (c) the Gain Account, to which will be credited or debited gains or losses after expenses of sale, when and as realized from the sale or other disposition by the Partnership of securities or other assets, whether or not any such gain or loss is recognized or constitutes long-term or short-term capital gain or loss or ordinary income or loss for Federal income tax purposes.

[16] It is represented that the Management Fee is covered by the statutory exemptive relief available under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether the General Partner's receipt of the Management Fee will satisfy the terms and conditions of section 408(b)(2) of the Act.

[17] As briefly alluded to in Representation 1, certain employees of TBFC, generally those who take an active part in the management of the Partnership, are limited partners in MidBanc VI, the General Partner of the Partnership. MidBanc VI will be entitled to receive the Performance Fee to the extent that it is earned. MidBanc VI will then allocate the Performance Fee among TBFC and the employees of TBFC who are limited partners in MidBanc VI.

the Performance Fee Account will provide a mechanism for measuring the General Partner's compensation for managing the Partnership. Such account will be a ''moving'' balance that will reflect the activity of the Partnership instead of actual dollars that are reserved or set aside for the General Partner. Until distributions from the Performance Fee Account are made, funds that the debit account credits represent will be invested for the benefit of the Limited Partners.

The Performance Fee will be paid during the final three years of the Partnership. Simply stated, the Performance Fee will equal 20 percent of the excess of net realized gains minus net unrealized losses of the Partnership, minus allowed distributions determined annually between the date of the first contribution to the Partnership until the disposition of the last Partnership asset.

In addition, the General Partner's Performance Fee will subject to the following terms and conditions:

(a) *Fee Base.* As noted above, the amount credited to the General Partner as the Performance Fee will be equal to a percentage of net realized gains minus net unrealized losses. The fee will be annually credited to the General Partner.[18]

(b) *Reduced Availability.* Prior to the termination of the Partnership, only 75 percent of the General Partner's Performance Fee may be drawn from the Partnership. (This limit will also apply to special income tax draws as described in Representation 12.)

(c) *Limited Deferral/Return of Capital.* Again, with the exception of the General Partner's income tax liabilities that are described in Representation 12, distributions of the Performance Fee cannot be made until January 1, 2009, which is after the completion of the Partnership's Acquisition Phase. Withdrawals with respect to the Performance Fee cannot be paid until investors have received distributions equal to 100 percent of their capital contributions.[19]

(d) *Debits.* The General Partner's Performance Fee Account is debited for the appropriate percentage of realized losses and net unrealized losses and distributions pursuant to the formula. The Performance Fee cannot be drawn when the Performance Fee Account is in a deficit position. Thus, if a gain is realized when the Performance Fee Account is in a deficit position, no Performance Fee can be paid to the General Partner and accrue in the Performance Fee Account. Sufficient gains must be realized to restore the deficit, restore the 25 percent cushion and generate surplus before any part of the Performance Feet can eventually be drawn down.

(e) *Unrealized Gains.* Although net unrealized losses are subtracted from net realized gains before the Performance Fee is calculated, net unrealized gains are excluded from the calculation of the General Partner's Performance Fee. In essence, the exclusion of net unrealized gains serves as an additional reserve ensuring that the General Partner will not be permitted withdrawals based on early gains that are subject to offset by later losses. The exclusion of net unrealized gains and the inclusion of net unrealized losses in the Performance Fee calculation operate to create a moving threshold or hurdle. If the General Partner draws on its Performance Fee Account and the Partnership experiences a later loss, the General Partner cannot take another fee until that loss is made up.

(f) *Distribution Repayment.* The General Partner must repay any deficit in the Performance Fee Account such that if the Partnership were to terminate at any time, the General Partner would not have received a Performance Fee in excess of that which reflects the Partnership's performance to that date.

11. The following examples illustrate the calculation of the General Partner's Performance Fee. Although the Performance Fee may be drawn annually for the specific purpose of satisfying the General Partner's tax liabilities under certain limited circumstances (see Section II(o) and Representation 12), generally the Performance Fee can only be drawn during 2009 and 2011, the final three years of the Partnership's anticipated term. However, for purposes of illustration, four draw years have been assumed in the examples.

EXAMPLE #1

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or Refund
1	$800	$160	$120	$120
2	200	40	30	(90)
3	1,000	200	150	120
4	700	140	105	(45)

Year 1 Assume that when the Performance Fee first becomes drawable in 2009 the Partnership's Cumulative Net Position is $800. The General Partner's Performance Fee is 20% of $200 or $160. The General Partner may draw 75% of the $160 or $120.[20]

Year 2 The Partnership's Cumulative Net Position at the end of Year 2 is $200. The General Partner's Performance Fee is 20% of $200 or $40. The General Partner is entitled to draw $30, but since it has previously drawn $120, it must refund $90.

Year 3 The Partnership now has a Cumulative Net Position of $1,000. The General Partner's Performance Fee is $200 with a permitted draw of $150. Because the General Partner has previously drawn a net amount of $30 at the end of Year 2 (i.e., $120 − $90), it may now draw an additional $120.

Year 4 The Partnership's Cumulative Net Position falls to $700 and the General Partner's Performance Fee falls to $140. The 75% draw equals $105, but the General Partner has previously drawn a total of $150

[18] Any payments of the Performance Fee will reflect realized gains inuring to the Partnership. For the Partnership to make a Performance Fee payment to the General Partner, it must sell a Partnership investment for a price exceeding the purchase price for such investment. Therefore, the proceeds of the sale will reflect the source of Performance Fee payments.

After the Partnership has invested its capital, it will have two sources of cash. One is income received from its investments, such as dividends or interest. The other is money received when it sells an investment.

[19] Where a partnership, such as the Partnership described herein, makes a distribution to the Limited Partners, that distribution can include any of the following: Income, realized gains, and/or return of capital. Income and gains can arise at any time during the partnership's life. Although income and gains occur after the initial investment phase of a partnership, in the case of the Funds, such distributions have occurred during the Acquisition Phase. However generally, the contributed capital that gives rise to a gain attributed to the Partnership during the Acquisition Phase will be reinvested by the General Partner. Conversely, the contributed capital that gives rise to a gain attributed to the Partnership after the Acquisition Phase has been completed, will be distributed to a Limited Partner if the gain is realized after the Acquisition Phase expires.

[20] The assumption is, for purposes of this example, that all Limited Partners investing in the Partnership have received a 100 percent return of their capital contributions.

(i.e., $120 − $90 + $120). Therefore, the General Partner must make a refund to the Partnership of $45.

EXAMPLE #2

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or Refund
1	$2,000	$400	$300	$300
2	1,000	200	150	(150)
3	500	100	75	(75)
4	900	180	135	60

Year 1 Assume that when the General Partner's Performance Fee first becomes drawable in 2009, the Cumulative Net Position for the Partnership is $2,000. The General Partner's Performance Fee is 20% of $2,000 or $400. The General Partner may draw 75% of the $400 fee or $300. $100 or 25% of the draw amount must be left in the Partnership as a cushion.[21]

Year 2 The Cumulative Net Position for the Partnership at the end of Year 2 has fallen to $1,000. The General Partner's Performance Fee is 20% of $1,000 or $200. The General Partner is entitled to draw $150, but since it has previously drawn $300, it must refund $150.

Year 3 The Cumulative Net Position for the General Partner has fallen to $500. The General Partner's Performance Fee now falls to $100 (i.e., 20% of $500) with a permitted draw of $75 and a cushion of $25. Because the General Partner has previously drawn $150 ($300 − $150), it must make a refund to the Partnership of $75.

Year 4 The Cumulative Net Position for the Partnership is $900 at the end of Year 4. The General Partner's Performance Fee is 20% of $900 or $180. The General Partner's 75% draw on the Performance Fee equals $135. However, since the General Partner has previously drawn a total of $75 ($300 − $150 −$75), it may now draw a Performance Fee of $60.

12. The General Partner has been informed by its counsel that gains realized by the Partnership will, to the extent that they are allocable to the General Partner's Performance Fee Account, be taxable to the General Partner in the year gains are realized by the Partnership, even though the distribution of gains attributable to the General Partner will be deferred. Therefore, to enable the individual owners of the General Partner or its affiliates (collectively, referred to as the General Partner) to discharge their obligations to state or federal taxing authorities, it is proposed that an amount sufficient to pay taxes (representing approximately 5 percent of the gains of the Partnership) be distributed to the General Partner solely during the Partnership's Acquisition Phase. The sale of the Portfolio Company securities that gives rise to the early distribution of such gains may only occur in connection with a third party merger, acquisition or tender offer and not through an exercise of discretion by the General Partner.

Such distributions will be charged against the General Partner's Performance Fee Account and will reduce the balance that is used to calculate the 25 percent cushion required before actual distributions can be made to the General Partner.[22] In the event the General Partner receives a tax refund, the amount will be repaid by the General Partner to the Partnership to the extent a distribution has been made to such General Partner.

To ensure that tax refunds are repaid, the General Partner will retain an independent accounting firm to calculate the tax liabilities and credits. If a tax payment is owed by the General Partner, it will appear as an asset (i.e., a receivable) on the Partnership's financial reports that are given to the Limited Partners.

In addition, the tax distributions will be in the exact amount of the General Partner's tax liability. All funds received in the distribution will be forwarded to the Service and no portion will be retained by either the General Partner or the Limited Partners. Therefore, there will be no gain by the General Partner.

Finally, TBFC notes that all of the Limited Partners were made aware of the tax distribution feature of the Partnership. TBFC states that this disclosure was made before the Limited Partners determined to commit capital to the Partnership.

13. The Partnership will terminate upon the earliest to occur of (a) the complete distribution of its assets, (b) a vote in favor of termination by 75 percent of the Limited Partners,[23] or (c) December 31, 2011. If it would be to the financial benefit of the Limited Partners to extend the term of the Partnership beyond 2011, extensions of up to two years may be initiated by the General Partner. Any further extension must be approved by the Limited Partners holding a majority of the Limited Partnership interests. Neither the General Partner nor the Partnership may acquire additional Partnership investments at the time of an extension. The purpose of the extension will be to allow the General Partner to liquidate the Partnership's existing investments, distribute the cash proceeds received from the liquidation to the Limited Partners, and terminate the Partnership.

Upon termination of the Partnership, all Portfolio positions will be liquidated, Partnership expenses will be paid and distributions will be made (including any remaining portion of the General Partner's Performance Fee). If all assets cannot be converted into cash or if it would be disadvantageous to liquidate every asset, remaining assets may be distributed in-kind, at the discretion of the General Partner. The General Partner will then receive a fractional portion of its fee, in-kind. To ensure that the General Partner will not select higher income-generating Partnership assets for itself, each Limited Partner, as well as the General Partner, will receive a

[21] The assumption is again, for purposes of this example, that all Plans investing in the Partnership have received a 100 percent return of their capital contributions.

[22] With the exception of the General Partner, all Limited Partners will receive distributions of gains when they are realized. (As noted previously, this could occur prior to the ending of the Acquisition Phase for the Partnership.) For example, if at any time during the Partnership's existence, a Portfolio Company security is purchased for $1 million and sold by the General Partner for $3 million, a $2 million gain will be realized by the Partnership. The Limited Partners will own $1.6 million of the gain while the General Partner will own $400,000 of the gain (i.e., 20 percent of the Performance Fee). Both Plan and non-Plan Limited Partners will receive an aggregate distribution of $1.6 million which will be allocated among such Limited Partners. Depending on whether the Limited Partner receiving a portion of the $1.6 million gain is a taxable or non-taxable entity, the amount allocated to the Limited Partner will be taxed. Although the $400,000 gain attributable to the General Partner will be deferred, the Service will view the General Partner as having received taxable income of $400,000. If the tax rate is 25 percent, the General Partner will owe the Service $100,000. It is the $100,000 that the General Partner seeks to obtain as a tax distribution. The General Partner's remaining Performance Fee amount of $300,000 will stay in the Partnership even though the Limited Partners will receive their proportionate share of the $1.6 million.

[23] A vote of 75 percent of the Limited Partners to remove the General partner will also result in the termination of the Partnership.

proportionate share of each Portfolio Company security that is distributed in-kind.

14. The following example illustrates the manner in which in-kind distributions will be made by the General Partner:

Assume that there are only two Limited Partners investing in the Partnership and that each has received a full return of capital. Non-Plan A investor has a Partnership interest worth $60 and Plan B has a Partnership interest worth $40.

The Partnership holds 100 shares of Bank X stock which it acquired for $5 per share. Upon termination of the Partnership, Bank X stock is worth $7 per share.

The total unrealized gain attributable to Bank X stock is ($7—$5) × 100 = $200.

The General Partner's Performance Fee is equal to $200 × 20% = $40.

The General Partner receives $40 $7 = 5.7 shares of Bank X stock.

The non-Plan investor receives 60% × 94.3 = 56.6 shares of Bank X stock.

The Plan investor receives 40% × 94.3 = 37.7 shares of Bank X stock.

15. In general, Partnership interests will not be assignable, and no Limited Partner may assign or otherwise transfer, pledge or otherwise encumber any or all of its interest in the Partnership without the prior consent of the General Partner. However, a Limited Partner may transfer its interest only after extending to the Partnership and the other Limited Partners the right of ''first offer.''

In addition, because the Partnership's investment philosophy is inconsistent with at-will withdrawals, redemptions of Partnership interests by Plan investors are limited to situations where (a) a replacement Plan is available from either current Plans investing in the Partnership or there are new, qualified investors; (b) a Plan submits to the General Partner, a written opinion of counsel to the effect that the Plan's continued participation in the Partnership would violate the Act and that relief from the violation cannot be obtained; and (c) the Partnership fails to obtain the exemptive relief proposed herein necessary for its operation. This information will be disclosed to investors.

16. The Partnership Agreement requires that the General Partner provide the Independent Fiduciary of each Plan proposing to invest in the Partnership with a copy of the Private Placement Memorandum by the General Partner. The Private Placement Memorandum describes all material facts concerning the purpose, structure and operation of the Partnership.

If the Independent Fiduciary expresses further interest in participating in the Partnership, such Independent Fiduciary will be provided with copies of the Partnership Agreement outlining the organizational principles, investment objectives and administration of the Partnership, the manner in which Partnership interests can be redeemed, the duties of the parties retained to administer the Partnership and the manner in which Partnership assets will be valued, the duties and responsibilities of the General Partner, the rate of remuneration that the General Partner will be paid and the conditions under which the General Partner may be removed. Once the Independent Fiduciary has made a decision to invest in the Partnership, the General Partner will provide such Independent Fiduciary with the names and addresses of all other participating Plans as well as non-Plan investors.

17. The Independent Fiduciary will be required to acknowledge, in writing, prior to purchasing a Limited Partner's interest in the Partnership that such fiduciary has received copies of the foregoing documents. The Independent Fiduciary will also be required to acknowledge, in writing, to the General Partner that such fiduciary is independent of the General Partner and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Partnership.

With respect to its ongoing participation in the Partnership, each Plan will receive the following written disclosures from the General Partner:

(a) Within 90 days after the end of each fiscal year of the Partnership as well as at the time of termination, an annual financial report containing a balance sheet for the Partnership as of the end of such fiscal year and a statement of the changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the remuneration actually paid or accrued to the General Partner.

(b) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

In addition to the foregoing reports, the General Partner will prepare and distribute to each Plan such other information as may be reasonably requested by the Plans to comply with the reporting requirements of the Act or Code (including copies of the proposed exemption and grant notice with respect to the exemptive relief granted herein).

At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of participating Plans will have the opportunity to decide on whether the Partnership or the General Partner should be terminated as well as discuss any aspect of the Partnership and Partnership Agreement under which it is operated. Finally, during each year of the Partnership, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries on matters concerning the Partnership.

18. The terms of all transactions that are entered into on behalf of the Partnership by the General Partner will be at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, valuations of (and for) the Partnership will be needed for general accounting purposes, to determine the value of the Partnership's assets for reports to the Limited Partners, for distributions of securities and to calculate the General Partner's Performance Fee when the General Partner seeks to draw upon it. The General Partner, subject to the review and approval of the Valuation Committee, will determine the fair market value of the assets and liabilities of the Partnership as of each fiscal date.[24] The Valuation Committee, which is the same advisory committee that served MBF I, MBF II and BF III, and currently serves BF IV and BF V, will also serve as the Independent Appraiser. The Valuation Committee is composed of three members who are experienced in valuing the securities of Portfolio Companies. None of the members of the Valuation Committee has an ownership

[24] It is represented that the General Partner will gather all requisite information to produce the valuation. This information may include pricing information on any exchange-traded securities plus more voluminous operating and financial data on the companies for whose securities there is a thinner market. The General Partner will then compile this infomraiton into a report which is submitted to the Valuation Committee. After reviewing the submitted information, the Committee will meet with the staff of the General partner to discuss the valuation materials. At the end of this meeting, the Valuation Committee will set the valuation for all Portfolio hedgings. Thus, from both a legal and operative standpoints, the partnership Agreement will control the valuation process and the Valuation Committee will value the Fund.

or creditor relationship with the General Partner.

As the Independent Appraiser, each member of the Valuation Committee must not be controlled by (or control) TBFC or the Partnership and must not receive more than 5 percent of their lowest annual income from the General Partner or the Partnership, either during the term of the Partnership or in the three years preceding its creation. Individual members of the Valuation Committee or the entire committee may be removed by the General Partner only for cause and with or without cause by Limited Partners holding a majority of the Limited Partnership interests. A majority of the Limited Partners must approve a replacement Independent Appraiser. If the Limited Partners and the General Partner cannot agree upon a replacement Independent Appraiser, the firm of KPMG Peat Marwick LLP will be appointed.

Although the General Partner will nominate the Independent Appraiser, the Limited Partners will be given the option of either approving or disapproving the nominee. The Independent Appraiser will not be appointed absent the affirmative written approval of a majority of the Limited Partners. However, the Limited Partners will have no veto power over the General Partner's decision that an Independent Appraiser is required.

If applicable, the Independent Appraiser will use the principles set forth in Revenue Ruling 59–60 and any regulations that the Department might propose to define ''Adequate Consideration'' to determine fair market value. The valuations made by the Independent Appraiser will be binding upon the General Partner. In addition, the Independent Appraiser will issue a report to the General Partner which sets forth the Independent Appraiser's pricing methodology and rationale for securities it has been asked to value. Such report will be issued after each required valuation and will comply with the aforementioned regulations.

With respect to securities for which a market exists, the Independent Appraiser will determine their value according to the following principles:

(a) *National Securities Exchange.* Any security which is listed on a national securities exchange generally will be valued based on its last sales price on the national securities exchange on which the security is principally traded on the valuation date.[25] If no sale of a listed security occurred on the valuation date, the value will be based on the last bid price.

(b) *No Listing.* Any security which is not listed on a national securities exchange will be valued upon the last publicly available bid price.[26]

(c) *Discount for Illiquidity.* Anything herein to the contrary notwithstanding, the Independent Appraiser in its discretion may apply a discount for illiquidity, on the valuation of securities that have a thin public market.

In the event that there is no independent market for a security or the security is not listed on a national securities exchange, the Independent Appraiser will be required to value such securities. Under such circumstances, the securities will be valued at the time of acquisition at their cost. The Independent Appraiser will continue valuing the securities at their cost until a determination is made that a different valuation level is indicated by the occurrence of (a) a significant change in book value, (b) a significant change in a Portfolio Company's business, (c) a significant third-party transaction, or (d) any other significant change in the Financial Company, its industry or the general market.

19. With respect to transactions that may arise during the existence of the Partnership and which involve parties in interest with respect to participating Plans, the General Partner requests exemptive relief from the provisions of section 406(a) of the Act. Specifically, TBFC requests exemptive relief where the Partnership sells securities in the Partnership Portfolio for cash or other securities to a party in interest with respect to a participating Plan in the context of an acquisition or merger by the party in interest, provided the party in interest is not an affiliate of the General Partner. TBFC represents that the Partnership will receive the same offer that other shareholders of Portfolio Companies will receive. Because the Partnership will always be a minority shareholder in such situation, TBFC states that the Partnership will be in the position of a beneficiary of the acquisition offer, and it will not be in the position of an active player in the merger or acquisition transactions.

20. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation by an Plan in the Partnership will be approved by an Independent Fiduciary.

(b) Each Plan investing in the Partnership will have assets that are in excess of $50 million.

(c) No Plan will invest more than 10 percent of its assets in the Partnership and a Plan's respective interest in this entity will not represent more than 25 percent of the assets of such Partnership.

(d) No Plan will invest more than 25 percent of its assets in investment funds and separate accounts managed or sponsored by TBFC and/or its affiliates.

(e) Prior to making an investment in the Partnership, each Independent Fiduciary contemplating investing therein will receive offering materials which disclose all material facts concerning the purpose, structure and operation of the Partnership and the fees paid to the General Partner.

(f) Each Plan investing in the Partnership will be required to acknowledge, in writing, prior to purchasing interests that such fiduciary has received copies of such documents and to acknowledge, in writing, to the General Partner that such fiduciary is (1) independent of the General Partner and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets; and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Partnership.

(g) The General Partner will make quarterly and annual written disclosures to participating Plans with respect to the financial condition of the Partnership and the total fees that it will receive for services rendered to such Partnership.

(h) The General Partner will hold annual meetings and conduct periodic discussions with Independent Fiduciaries to address matters pertaining to the Partnership.

(i) The terms of all transactions that are entered into on behalf of the Partnership by the General Partner shall remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets of the Partnership will be based upon independent market quotations or determinations made by an Independent Appraiser.

[25] TBFC explains that the phrase ''principally traded'' means that if a security is traded on more than one exchange and if the trade prices differ between exchanges, the value will be taken from the exchange on which the largest volume of that security has traded.

[26] TBFC explains that the most recent trade price is not used to value a security in this instance because it may be too dated to provide an accurate estimate of value. Instead, TBFC considers the bid price to be indicative of the current value at which someone would be willing to acquire a security on the valuation date. TBFC further notes that the use of the bid price rather than the previous trading or closing price in valuing a security provides a conservative valuation approach which will result, in most instances, in a lower Performance Fee paid to the General Partner. The Department assumes that the bid price described herein represents active bids and is a true indicator of market prices.

(j) As to each Plan, the total fees paid to the General Partner and its affiliates will constitute no more than reasonable compensation.

(k) Any increase in the General Partner's Performance Fee will be based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard,

(1) Except as described below in paragraph (1) of this Representation 20, no part of the General Partner's Performance Fee may be withdrawn before December 31, 2009, which represents the completion of the Acquisition Phase of the Partnership and not until the Limited Partners have received distributions equal to 100 percent of their capital contributions to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn from the Partnership.

(3) The Performance Fee Account established for the General Partner will be credited with net realized gains and charged for net unrealized losses and Performance Fee distributions.

(4) The General Partner will repay all deficits in its Performance Fee Account and it will maintain a 25 percent cushion in such account before receiving any further distribution.

(l) The General Partner will be entitled to take distributions with respect to its Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership:

(i) only during the Partnership's Acquisition Phase; and

(ii) provided such gains are based on the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition.

(m) The General Partner will be obligated to repay to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

Notice to Interested Persons

Notice of the proposed exemption will be given to Plans intending to invest in the Partnership within 3 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 33 days after the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

Unifi, Inc. Retirement Savings Plan (the Plan) Located in Greensboro, North Carolina

[Application No. D–11094]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of a certain parcel of improved real property (the Property) by the Plan to Unifi, Inc., the Plan's sponsor and, as such, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Plan receives the greater of: (i) $7,500,000; or (ii) fair market value for the Property, as established by an independent qualified appraiser at the time of the sale;

(c) The Plan pays no commissions or other expenses associated with the sale; and

(d) the applicant files Form 5330 with the Internal Revenue Service (IRS) and pays all of the appropriate excise taxes within 60 days of the date that the grant for this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The Plan is a successor in interest to the Unifi, Inc. Profit Sharing Plan and Trust, which was merged therein effective December 25, 2001. The Plan is a defined contribution profit sharing plan with a safe harbor cash or deferred arrangement. As of December 31, 2001, the Plan had 4,754 participants, and $169,680,792 in total assets. The Plan's real estate trustee is Merrill Lynch Trust Company of North Carolina (MLTC of N.C.), a North Carolina corporation, having its principal office at 1600 Merrill Lynch Drive, MSC–0601, Pennington, New Jersey. MLTC of N.C. is the current title holder of the Property.

Unifi, Inc. (Unifi) is the sponsor of the Plan. Unifi is a New York corporation which is in the business of texturizing and producing fabrics.

2. In 1987, Unifi contributed the Property to the Plan, and subsequently leased (the Lease) such Property back from the Plan. These transactions were the subject of an individual prohibited transaction exemption (PTE) granted by the Department (see PTE 87–28, 52 FR 8380, March 17, 1987). The Lease expired, by its terms, on March 12, 2002. The applicant maintains that all terms and conditions of PTE 87–28 have been met. The applicant, however, makes no representations as to whether Wachovia Bank and Trust Company, N.A. (Wachovia) fulfilled all of its obligations as the independent fiduciary (the I/F) under PTE 87–28.[27] The applicant states that at all times during the Lease, the Plan received rent payments consistent with the fair market value of the property, as required by the Lease. However, in a prior application submitted to the Department on March 13, 2002, which requested relief for a continuation of the Lease by Unifi,[28] the applicant stated that Wachovia, the I/F for the Lease under PTE 87–28, unilaterally elected to cease functioning as an independent fiduciary for the Plan effective on or before March 13, 2002. Therefore, as of that date, Unifi states that it was engaging in a prohibited transaction by continuing the Lease pursuant to a holdover provision contained therein. Unifi represents that it was unsuccessful in locating a successor I/F for the Lease or a new lease of the Property to Unifi. In this regard, Unifi states that it will file Form 5330 with the IRS and pay all of the appropriate excise taxes for the period that the Property remains leased after March 12, 2002 to Unifi until the date of the proposed sale of the Property to Unifi. Such excise taxes will be paid within sixty (60) days of the date that the final exemption for this proposed sale is published in the **Federal Register**.

The applicant represents that the Plan has paid no expenses or holding costs during the period of time it has owned the Property. Unifi has paid all real estate taxes, the cost of improvements, repairs or insurance during the time the Property has been owned by the Plan, as

[27] In this regard, the Department is providing no opinion, or comments, at this time with respect to Wachovia's successful completion of its duties and obligations as the I/F for the Lease.

[28] This application was subsequently withdrawn by Unifi (see Exemption Applicaiton No. D–11080).

was required by the Lease under PTE 87–28.

4. The Property is located at 7201 West Friendly Street in Greensboro, North Carolina. The Property consists of 8.52 acres of land with improvements. These improvements are a one and two-story, single-user professional office building, containing approximately 98,717 square feet of gross building area. The Property was appraised on March 7, 2002 (the Appraisal) by Mark A. Morgan and Fred H. Beck, Jr., MAI, CCIM, both qualified independent real estate appraisers (collectively, the Appraisers). The Appraisers are with Fred H. Beck and Associates, LLC, Real Estate Appraisers and Consultants, which is located on 6525 Morrison Boulevard, Charlotte, North Carolina.

In determining the fee simple estate [29] value of the Property, the Appraisers considered the Cost Approach, the Income Approach, and the Sales Comparison Approach. Based on their analysis, the Property had a fair market value of approximately $7.5 million, as of March 7, 2002. In addition, the Appraisal states that the current fair market rental rate for the entire Property, as would be leased to one tenant on an absolute net basis, was $72,058 per month, as of March 7, 2002. Unifi represents that it is currently paying this amount to the Plan each month as rent for the Property.

The applicant states that the Appraisal will be updated at the time of the proposed transaction, in order to ensure that the Plan receives no less than the current fair market value of the Property (i.e., the fee simple estate) on the date of the sale. In any event, the applicant represents that the purchase price of the Property to be paid by Unifi will be the greater of: (i) $7,500,000, the fair market value as currently appraised; or (ii) the fair market value of the Property as determined by the updated Appraisal.

5. The applicant proposes that Unifi purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan because, among other things, the Plan will pay no expenses or commissions associated with the sale. Unifi will pay the Plan an amount equal to the current fair market value of the Property, as established by an independent, qualified appraiser. In this regard, the applicant maintains that the Property is not adjacent to any other real estate owned by Unifi or the Plan. The sale of the Property by the Plan to Unifi will help to avoid the time and expense of locating an unrelated third party buyer [30] or lessee for the Property. In addition, the applicant wants to avoid the time and expense of obtaining the Department's approval for a new lease of the Property to Unifi, pursuant to a new PTE with a new I/F.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of: (i) $7,500,000; or (ii) the fair market value for the Property, as established by an independent qualified appraiser at the time of the sale;

(c) the Plan will pay no commissions or other expenses associated with the sale;

(d) the sale will enable the Plan to sell the Property, which is currently subject to a lease that became a prohibited transaction under the Act as of March, 2002; and

(e) the applicant will file Form 5330 with the IRS and pay appropriate excise taxes within 60 days of the date of a grant of this proposed exemption.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of June, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor, Department of State.

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[29] The Appraisal defines the term ''fee simple estate'' as ''* * * absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the government powers of taxation, eminent domain, police power and escheat.''

[30] The applicant represents that the Plan has been unsuccessful in locating an independent third party buyer for the Property.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–28; (Exemption Application No. D–10869), et al.]

Grant of Individual Exemptions; Massachusetts Mutual Insurance Company (MassMutual)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for

exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Massachusetts Mutual Insurance Company (MassMutual) Located in Springfield, Massachusetts

[Prohibited Transaction Exemption 2002– ; Exemption Application No. D–10869]

Exemption

Section I. Retroactive Exemption for the Purchase of Fund Shares

For the period from April 1, 1995 until June 6, 2002, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase by an employee benefit plan (the Client Plan) (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more diversified open-end management investment companies (Fund or Funds) in exchange for Client Plan assets transferred in-kind to a Fund from a single customer or pooled separate account or other pooled vehicle holding plan assets maintained by MassMutual (a Separate Account), where MassMutual or its affiliate is the Fund's investment adviser and a Client Plan fiduciary.

The exemption is subject to the following conditions: [1]

(a) No sales commissions, redemption fees, or other fees are paid by the Client Plan in connection with the purchase of Fund shares by a Client Plan.

(b) All transferred assets are either cash or securities for which market quotations are readily available.

(c) The assets transferred in-kind to the Funds constitute the Client Plan's pro rata portion of the assets held by the Separate Account immediately prior to the transfer.

(d) The Client Plan receives Fund shares having a total net asset value equal to the value of the assets transferred by the Client Plan on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day with respect to all Client Plans participating in the transaction on such date, in accordance with the procedures set forth in Rule 17a–7 of the Investment Company Act of 1940 (the 1940 Act) (using sources independent of MassMutual and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets.

(e) An Independent Fiduciary with respect to each Client Plan receives advance written notice of an in-kind transfer and purchase of assets and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund to which the Separate Account's assets may be transferred, updated as necessary, deliverable: (i) In hard copy format either automatically or upon timely notification to the Independent Fiduciary that a hard copy format is available upon request; or (ii) in electronic copy format upon timely notification to the Independent Fiduciary that such electronic format is available by accessing MassMutual's internet website.

(2) A statement describing the investment advisory and other fees to be charged to, or paid by, a Client Plan and the Funds to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees paid by the Client Plan in connection with the Client Plan's investment in the Separate Account;

(3) A statement of the reasons why MassMutual considers such investment to be appropriate for the Client Plan; and

(4) A statement describing whether there are any limitations applicable to MassMutual with respect to which Client Plan assets may be invested in Fund shares, including the nature of the limitations.

(f) The Independent Fiduciary may: (1) Opt-out of the in-kind transfer of the Client Plan's interest in the Separate Account for shares of the Funds (including by selling its interest in a pooled vehicle) without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (e) of this Section) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Approval for the in-kind transfer of a Client Plan's interest in the Separate Account in exchange for Fund shares may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occur at least 45 days before the in-kind transfer and the second written request occur at least 30 days before the in-kind transfer.

(g) MassMutual sends a written confirmation by regular mail or personal delivery to the Independent Fiduciary of each Client Plan participating in the in-kind transfer, no later than 105 days after completion of each purchase, containing:

(1) The number of Separate Account units held by the Client Plan immediately before the transfer, and the related per unit value and the total dollar amount of such units; and

(2) The number of Fund shares held by the separate account immediately following the transfer, and the related per share net asset value and the total dollar amount of such shares.

(h) All other dealings between the Client Plan and the Funds are on a basis no less favorable to the Client Plan than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(i) Conditions (a) and (f) of Section III have been met.

[1] The Department notes that the exemption does not provide relief for any prohibited transactions that may arise in connection with terminating a separate investment account, or permitting certain plans to withdraw from a separate investment account that is not terminating, or liquidating or transferring any plan assets held by the separate investment account.

Section II. Prospective Exemption for the Purchase of Fund Shares

Effective after [insert date of publication of this final exemption in the **Federal Register**], the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase by a Client Plan (directly or through a single customer or pooled separate account or other pooled vehicle) of shares of one or more Fund(s) in exchange for Client Plan assets transferred in-kind to a Fund from a Separate Account, where MassMutual or its affiliate is the Fund's investment adviser and a Client Plan fiduciary.

The exemption is subject to the following conditions:

(a) The assets transferred in-kind to the Funds constitute the Client Plan's pro rata portion of the assets held by the Separate Account immediately prior to the transfer. Notwithstanding the foregoing, the allocation among Client Plans of fixed-income securities held by a Separate Account on the basis of each Client Plan's pro rata share of the aggregate value of such securities will not fail to meet the requirements of this subsection if:

(1) The aggregate value of the fixed-income securities does not exceed one percent of the total value of the assets held by the Separate Account immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(b) An Independent Fiduciary with respect to each Client Plan receives advance written notice of the in-kind transfer and purchase and full written disclosure of information concerning the Funds including:

(1) The identity of the securities that will be valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(2) The identity of any fixed-income securities allocated on the basis of each Client Plan's pro rata share of the aggregate value of such securities pursuant to Section II (a);

(3) Upon request of the Independent Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption; and

(4) The date on which the in-kind purchase will take place.

(c) MassMutual sends by regular mail or personal delivery to the Independent Fiduciary of each Client Plan that purchases Fund shares pursuant to the in-kind transfer:

(1) Not later than 30 days after the completion of the purchase, a written confirmation containing:

(A) The identity of each security valued in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(B) The current market price, as of the date of the in-kind transfer, of each such security involved in the purchase of Fund shares; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such securities; and

(2) Not later than 90 days after each in-kind transfer, a written confirmation which contains:

(A) The number of Separate Account units held by such affected Client Plan immediately before the in-kind transfer (and the related per unit value and the aggregate dollar value of the units transferred); and

(B) The number of shares in the Funds that are held by such affected Client Plan following the in-kind transfer (and the related per share net asset value and the aggregate dollar value of the shares received).

(d)(1) MassMutual provides the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(A) A copy of an updated prospectus, deliverable in the manner specified in paragraph (e) of Section I, of such Fund, at least annually; and

(B) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with an affiliate of MassMutual, MassMutual will provide the Independent Fiduciary of such Client Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to an affiliate of MassMutual by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to MassMutual;

(C) The average brokerage commissions per share, expressed as cents per share, paid to an affiliate of MassMutual by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to MassMutual.

(e) The Independent Fiduciary may: (1) Opt-out (including by selling its interest in a pooled vehicle) of the in-kind exchange of the Client Plan's interest in the Separate Account for shares of the Funds without penalty; or (2) approve the in-kind transfer (on the basis of the prospectus and disclosure referred to in paragraph (b) of this Section and paragraph (e) of Section I) consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Approval for the in-kind transfer of a Client Plan's interest in the Separate Account in exchange for Fund shares may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs within 45 days thereafter.

(f) All of a Client Plan's assets held in a Separate Account (other than Fund shares already held in the Account) are transferred in-kind to one or more of the Funds in exchange for Fund shares, except that any Plan assets in the Separate Account which are not suitable for acquisition by the Funds shall be liquidated as soon as reasonably practicable, and the cash proceeds shall be invested directly in shares of the Funds.

(g) The authorization described in paragraph (e) of this section is terminable at will by the Independent Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by MassMutual redeeming the shares of the Fund(s) held by the affected Client Plan or selling its interest in a Separate Account, in one business day, provided that if, due to circumstances beyond the control of MassMutual, the redemption cannot be executed within one business day, MassMutual shall have one additional business day to complete such redemption.

(h) Conditions (a), (b), (d), (e), and (h) of Section I, Conditions (a) and (e) of Section III, and Conditions (a) and (b) of Section V have been met.

Section III. Retroactive Exemption for the Receipt of Fees

For the period from April 1, 1995 until June 6, 2002, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the receipt of fees by

MassMutual from the Funds for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services'', as defined in Section VI(i), in connection with the investment by the Client Plans for which MassMutual serves as a fiduciary in shares of the Funds.

The exemption is subject to the following conditions:

(a) As to each Client Plan, the combined total of all fees received by MassMutual for the provision of services to the Client Plan, and for the provision of services to a Fund in which a Client Plan holds shares, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value of such shares, as defined in Section VI(g), at the time of the transaction and is the same price that would have been paid or received for the shares by any other investor at that time.

(c) Neither MassMutual, other than in its capacity as agent for the Funds, nor any officer or director of MassMutual, purchases or sells shares of the Funds from or to any Client Plan.

(d) The Independent Fiduciary approves the fees to be paid by the Funds to MassMutual as such fees relate to:

(1) Fund shares purchased by a Client Plan for cash;

(2) Fund shares purchased by a Client Plan pursuant to an in-kind transfer (upon the Independent Fiduciary's consideration of the information described in paragraph (e) of Section I);

(3) the addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan. The approvals required in this paragraph may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan to MassMutual's two written requests (one by certified mail) for approval of a change in the rates of fees provided that the first such request occurs at least 45 days before the in-kind transfer and the second written request occur at least 30 days before the in-kind transfer. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by a Client Plan and need not relate to any other aspects of such investment.

(e) The Fund Adviser does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the acquisition of Fund shares in exchange for Client Plan assets.

(f) The Plan does not pay any plan-level investment management, investment advisory or similar fee with respect to the Client Plan assets invested in such shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by an investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(g) On an annual basis, MassMutual provides the Independent Fiduciary of each Client Plan holding shares of the Funds with—

(1) A copy of an updated prospectus of such Fund, deliverable in the manner specified in paragraph (e) of Section I of this exemption; and

(2) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to MassMutual or its affiliates.

(3) Oral or written responses to inquiries of the Independent Fiduciary as they arise.

(h) Conditions (a), (e), (h) and (i) of Section I, Condition (b) of Section II, and Conditions (a) and (b) of Section V have been met.

Section IV. Prospective Exemption for the Receipt of Fees

Effective after June 6, 2002, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the receipt of fees by MassMutual from the Funds for acting as an investment adviser for such Funds, as well as for providing other services to the Funds which are ''Secondary Services,'' as defined in Section VI(i), in connection with the investment by the Client Plans for which MassMutual serves as a fiduciary in shares of the Funds, provided that the following conditions are met:

(a) For each Client Plan using the fee structure described in paragraph (d)(2) of this Section with respect to investments in a particular Fund, the Independent Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by MassMutual to the Funds for investment advisory services.

(b) All authorizations made by an Independent Fiduciary regarding investments in a Fund and the fees paid to MassMutual are subject to an annual reauthorization, wherein any such prior authorization referred to in Section III(d) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by MassMutual of written notice of termination. The Independent Fiduciary must be supplied with a Termination Form, at the times specified in paragraph (c) of this Section, with instructions on the use of the form, including the following information:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Client Plans, upon receipt by MassMutual of written notice from the Independent Fiduciary; and

(2) Failure by the Independent Fiduciary to return the Termination Form on behalf of a Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to the requirements of this Section, and will result in the continuation of the authorizations of MassMutual to engage in the transactions on behalf of such Client Plan.

(c) The Independent Fiduciary is supplied with a Termination Form no less than annually; provided that the Termination Form need not be supplied to the Independent Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (e) below, except to the extent required to disclose an additional service or an increase in fees.

(d) Each Client Plan satisfies either (but not both) of the following:

(1) For a Client Plan for which MassMutual serves as a non-discretionary trustee, the Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to MassMutual with respect to Client Plan assets invested in shares of the Funds. This condition does not preclude the payment of investment advisory fees, or similar fees, by a Fund to MassMutual under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly

adopted agreement between MassMutual and the Funds.

(2) For a Client Plan for which MassMutual serves as a discretionary fiduciary (i.e., a trustee or investment manager), such Client Plan pays MassMutual an investment advisory fee based on total Client Plan assets from which a credit had been subtracted representing such Client Plan's pro rata share of all investment advisory fees paid by the Funds. This condition does not preclude the payment of fees for Secondary Services to MassMutual pursuant to a duly adopted agreement between MassMutual and the Funds.

(e)(1) For each Client Plan using the fee structure described in paragraph (d)(1) of this Section with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to MassMutual regarding any investment management services, investment advisory services, or similar services that MassMutual provides to the Fund over an existing rate for such services that had been authorized by an Independent Fiduciary in accordance with paragraph (d) of Section III; or

(2) For any Client Plan under this exemption, an addition of a Secondary Service (as defined in Section V (i)) provided by MassMutual to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to MassMutual for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by MassMutual for such fee over an existing rate for such Secondary Service that had been authorized by the Independent Fiduciary of a Client Plan in accordance with paragraph (d) of Section III—

MassMutual will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Independent Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described above.

(f) Conditions (a), (e) and (h) of Section I, Conditions (b) and (d) of Section II, Conditions (a), (b), (c), (d), (e), and (g) of Section III, and Conditions (a) and (b) of Section V have been met.

Section V. General Conditions

(a) MassMutual maintains for a period of six years the records necessary to enable the persons described in paragraph (b) of this section to determine whether the conditions of this exemption, and the proper crediting of fees described in paragraph (d)(2) of Section IV, have been met, except that:

(1) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of MassMutual, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than MassMutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) below and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (a) in this section are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) above shall be authorized to examine trade secrets of MassMutual, or commercial or financial information that is privileged or confidential.

Section VI. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee or relative of such person, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''Client Plan'' means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, and a plan described in section 4975(e)(1) of the Code.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''fixed income security'' means any interest-bearing or discounted government or corporate debt security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, and to repay the principal amount of the loan at maturity.

(e) The term ''Fund'' or ''Funds'' means any diversified open-end management investment company or companies registered under the Advisers Act for which MassMutual or its affiliates serves as an investment adviser, and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other secondary service (as defined in paragraph (j) of this section).

(f)(1) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, MassMutual. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, MassMutual if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, II, III, or IV is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of MassMutual and represents that such fiduciary shall advise MassMutual if those facts change.

(2) Notwithstanding anything to the contrary in this Section VI(f), a fiduciary is not independent if:

(i) such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Insurer;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from MassMutual for his or her own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of MassMutual, responsible for the transactions described in Section I, II, III or IV is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I, II, III or IV. However, if such individual is a director of

MassMutual or of the responsible fiduciary and if he or she abstains from participation in the decision to authorize or terminate authorization for transactions described in Section I, II, III or IV, then Section VI(f)(2)(iii) shall not apply.

(g) The term ''Net Asset Value'' means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and Statement of Additional Information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(h) The term ''pooled separate account'' means a pooled investment fund maintained by MassMutual or an affiliate for the collective investment of assets attributable to two or more plans maintained by unrelated employers.

(i) The term ''secondary service'' means a service provided by MassMutual or an affiliate to a Fund other than investment management, investment advisory or similar services.

(j) The term ''security'' shall be defined by section 2(36) of the Advisers Act, as amended, 15 U.S.C. 80a–2(36) (1996).

(k) The term ''Fund Adviser'' means (i) any affiliate of MassMutual which serves as an investment adviser to a Fund, and (ii) any affiliate of an investment adviser identified in subsection (i).

(l) The term ''Termination Form'' means the form supplied to the Independent Fiduciary, at the times specified above, which expressly provides an election to the Independent Fiduciary to terminate on behalf of the Client Plans the authorizations described in Paragraph (b) of Section IV. Such Termination Form may be used at will by the Independent Fiduciary to terminate such authorization without penalty to the Client Plans and to notify MassMutual in writing to effect such termination by redeeming the shares of the Fund held by the Client Plans requesting termination by the close of the business day following the date of receipt by MassMutual, whether by mail, hand delivery, facsimile or other available means at the option of the Independent Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of MassMutual, the redemption cannot be executed within one business day, MassMutual shall have one additional business day to complete such redemption.

Written Comments

In response to the proposed exemption, the Department received one comment letter submitted by MassMutual (hereinafter, the applicant). In the letter, the applicant requested a change with respect to the retroactive portions of the exemption (sections I and III) relating to certain time-frames in which MassMutual is required to make the requests to an Independent Fiduciary. Specifically, section I(f) requires that MassMutual make certain requests to an Independent Fiduciary for the advance approval of an in-kind transfer for retroactive relief, and section III(d) requires that MassMutual make certain requests to an such fiduciary for the advance approval of certain fees and/or services provided by MassMutual. In this regard, both sections provide that each such approval:

''may be presumed notwithstanding that MassMutual does not receive any response from a Client Plan pursuant to MassMutual's two written requests (one by certified mail) for such approval, provided that the first such request occurs at least 90 days before the in-kind transfer and the second such request occurs *within 45 days thereafter.*'' (emphasis added)

The applicant requests that, with respect to the time-frame described above, the first written request occur at least 45 days before the in-kind transfer and the second written request occur at least 30 days before the in-kind transfer. The applicant represents that such time-frame has ensured that adequate and timely notice was given to an Independent Fiduciary with respect to any in-kind transfer and any change in fees/services described in the exemption. The Department has determined that it is appropriate to modify paragraph section I(f) and section III(d) as requested and has revised the exemption accordingly.

Additionally, MassMutual requested a modification with respect to the manner in which a prospectus for each Fund may be delivered. Such modification affects section I(e), section II(d), section III(g), and section IV(f) (which require, among other things, that condition (e) of section I, condition (d) of section II, and condition (g) of section III must be met) of the exemption. In this regard, the applicant requests that the delivery of a prospectus pursuant to the affected sections of the exemption may occur in one of two ways: (1) MassMutual may automatically deliver a prospectus to an Independent Fiduciary in hard copy format; or (2) MassMutual may notify an Independent Fiduciary that a hard copy format of the prospectus is available upon request or an electronic copy format of the prospectus is available by accessing MassMutual's internet website. The applicant represents the notification and delivery arrangements described above are sufficient to ensure that an Independent Fiduciary is able to obtain a prospectus in a timely manner. The Department has agreed to this request by the applicant and, accordingly, has revised the exemption.

After giving full consideration to the entire record, including the written comment noted above, the Department has decided to grant the exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11026) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693–8544 (This is not a toll-free number).

Wyndham International, Inc., Employee Savings & Retirement Plan (the Plan), Located in Dallas, Texas

[Prohibited Transaction Exemption 2002–29; Exemption Application No. D–10912]

Exemption

The restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past acquisition, holding, and exercise by the Plan of certain stock purchase rights (the Rights),[2] which were issued by Wyndham International, Inc. (Wyndham) to all shareholders of record, as of September 30, 1999, of certain Wyndham common stock (the Common Stock) pursuant to a rights offering (the Rights Offering), provided that the following conditions were satisfied:

(a) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of Wyndham as a corporate entity;

[2] The applicant states that the Rights do not constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.

(b) All holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; and

(c) All decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts.

Effective Date: This exemption is effective for the period from November 9, 1999 to December 8, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 18, 2002 at 67 FR 12062.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

EquiLend Holdings LLC (EquiLend), Located in New York, New York

[Prohibited Transaction Exemption 2002–30; Exemption Application No. D–11026]

Exemption

Section I. Sale of EquiLend Products to Plans

The restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply, effective March 29, 2002, to the sale or licensing of certain data and/or analytical tools to an employee benefit plan by EquiLend, a party in interest with respect to such plan.

This exemption is subject to the following conditions:

(a) The terms of any such sale or licensing are at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party;

(b) Any data sold/licensed to the plan will be limited to:

(1) Current and historical data related to transactions proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,

(2) Data derived from current and historical data using statistical or computational techniques; and

(c) Each analytical tool sold/licensed to the plan will be an objective statistical or computational tool designed to permit the evaluation of securities lending activities.

Section II. Use of Platform by Owner Lending Agent/Sale of EquiLend Products to Plans Represented by Owner Lending Agent

The restrictions of sections 406(a) and 406(b) of the Act, section 8477(c)(2) of FERSA, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective March 29, 2002, to: (1) The participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for a plan (an Owner Lending Agent); and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent.

This exemption is subject to the following conditions:

(a) In the case of participation in the Platform on behalf of a plan, to the extent an applicable exemption is required, the securities lending transactions conform to the provisions of Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527 (Jan. 23, 1981)), PTE 82–63 (46 FR 14804 (Apr. 6, 1982)), and/or any applicable individual exemption;

(b) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(c) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with the Act, the Code, and FERSA. This requirement may be met by including such notification in the participation, subscription or other user agreement required to be executed by each participant in EquiLend;

(d) EquiLend will not act as a principal in any securities lending transaction involving plan assets;

(e) Each Owner Lending Agent will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(f) (1) Except as otherwise provided in paragraph (i), the arrangement pursuant to which the Owner Lending Agent utilizes the services of EquiLend on behalf of a plan for securities lending:

(A) Is subject to the prior written authorization of an independent fiduciary (an ''authorizing fiduciary'') as defined in paragraph (b) of section III). For purposes of subparagraph (f)(1), the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(B) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days. Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied in the case of any plan for which the authorizing fiduciary has previously provided written authorization to the Owner Lending Agent pursuant to PTE 82–63, unless such authorizing fiduciary objects to participation in the Platform in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraphs (e) and (g) of this section to such authorizing fiduciary; and

(2) Except as otherwise provided in paragraph (i), each purchase or license of a securities lending-related product from EquiLend on behalf of a plan by an Owner Lending Agent:

(A) Is subject to the prior written authorization of an authorizing fiduciary. For purposes of subparagraph (f)(2), the requirement for prior written authorization shall not apply to any purchase or licensing of an EquiLend securities lending-related product by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan; and

(B) May be terminated by the authorizing fiduciary within (i) the time negotiated for such notice of termination by the plan and the Owner Lending Agent or (ii) five business days, whichever is lesser, in either case without penalty to the plan, provided that, such authorizing fiduciary shall be deemed to have given the necessary authorization in satisfaction of this paragraph (f)(2) with respect to each specific product purchased or licensed pursuant thereto unless such authorizing fiduciary objects to the Owner Lending Agent within 15 days after the delivery of information regarding such specific product to the authorizing fiduciary in accordance with paragraph (g) of this exemption;

(g) The authorization described in paragraph (f) of this section shall not be deemed to have been made unless the Owner Lending Agent has furnished the authorizing fiduciary with any reasonably available information that the Owner Lending Agent reasonably believes to be necessary for the authorizing fiduciary to determine whether such authorization should be made, and any other reasonably

available information regarding the matter that the authorizing fiduciary may reasonably request. This includes, but is not limited to: (1) A statement that the Equity Owner, as securities lending agent, has a financial interest in the successful operation of EquiLend, and (2) a statement, provided on an annual basis, that the authorizing fiduciary may terminate the arrangement(s) described in (f) above at any time;

(h) Any purchase or licensing of data and/or analytical tools with respect to securities lending activities by a plan pursuant to this section complies with the relevant conditions of section I and will be authorized in advance by an authorizing fiduciary in accordance with the applicable procedures of paragraphs (f), (g) and (i);

(i) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency (Commingled Investment Fund), the requirements of paragraph (f) of this section shall not apply, provided that—

(1) The information described in paragraph (g) (including information with respect to any material change in the arrangement) of this section and a description of the operation of the Platform (including a description of the fee structure paid by securities lenders and borrowers), shall be furnished by the Owner Lending Agent to the authorizing fiduciary (described in paragraph (b) of section III) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of any such arrangement or material changes thereto, or, not less than 15 days prior to the purchase or license of any specific securities lending-related product, and, where requested, upon the reasonable request of the authorizing fiduciary. For purposes of this subparagraph, the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(2) In the event any such authorizing fiduciary notifies the Owner Lending Agent that it objects to participation in the Platform, or to the purchase or license of any EquiLend securities lending-related tool or product, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement or purchase or license, but any existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the pooled account or fund subsequent to the implementation of the arrangements and which has not authorized the arrangements in the manner described in paragraphs (i)(1) and (i)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (f)(1)(A) and (f)(2)(A);

(j) The Equity Owner, together with its affiliates (as defined in paragraph (a) of section III), does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner (i.e., in its capacity as Owner Lending Agent) through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of:

(1) If EquiLend is a corporation, including a limited liability company taxable as a corporation, the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of EquiLend, or

(2) If EquiLend is a partnership, including a limited liability company taxable as a partnership, the capital interest or the profits interest of EquiLend;

(k) Any information, authorization, or termination of authorization may be provided by mail or electronically; and

(l) No Equity Owner Plan, as defined in section III(e) below, will participate in the Platform, other than through a Commingled Investment Fund in which the aggregate investment of all Equity Owner Plans at the time of the transaction constitutes less than 20% of the total assets of such fund. Notwithstanding the foregoing, this prohibition shall not apply to the participation by an Equity Owner Plan as of the date that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants outstanding on such date (excluding transactions entered into on behalf of Equity Owner Plans) is equal to or greater than $10 billion; provided that if such aggregate loan balance is later determined to be less than $10 billion, no additional participation by an Equity Owner Plan (other than through a Commingled Investment Fund) shall occur until such time as the $10 billion threshold amount is again met.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''authorizing fiduciary'' means, with respect to an Owner Lending Agent, a plan fiduciary who is independent of such Owner Lending Agent. In this regard, an authorizing fiduciary will not be considered independent of an Owner Lending Agent if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Owner Lending Agent; or

(2) Such fiduciary directly or indirectly receives any compensation or other consideration from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described herein; provided that Commingled Investment Funds and Equity Owner Plans maintained by such Owner Lending Agent or an affiliate will not be deemed affiliates of such Owner Lending Agent for purposes of this subparagraph (2).

For purposes of Section II, no Equity Owner or any affiliate may be an authorizing fiduciary except in the case of an Equity Owner Plan. Notwithstanding the foregoing, the requirements for consent by an authorizing fiduciary with respect to participation in the Platform, and the annual right of such fiduciary to terminate such participation, shall be deemed met to the extent that the Owner Lending Agent's proposed utilization of the services of EquiLend on behalf of a plan for securities lending has been approved by an order of a United States district court.

(c) The term ''Owner Lending Agent'' means an Equity Owner in its capacity

as a fiduciary of a plan acting as securities lending agent in connection with the loan of plan assets that are securities.

(d) The term ''Equity Owner'' means an entity that either directly or through an affiliate owns an equity ownership interest in EquiLend.

(e) The term ''Equity Owner Plan'' means an employee benefit plan, as defined under section 3(3) of the Act, which is established or maintained by an Equity Owner of EquiLend, as defined in section III(d) above, as an employer of employees covered by such plan, or by its affiliate.

(f) The terms ''employee benefit plan'' and/or ''plan'' means:

(1) An ''employee benefit plan'' within the meaning of section 3(3) of the Act subject to Part 4 of Subtitle B of Title I of the Act,

(2) A ''plan'' (within the meaning of section 4975(e)(1) of the Code) subject to section 4975 of the Code, or

(3) The Federal Thrift Savings Fund.

Written Comments

The Department received one comment letter submitted by EquiLend Holdings LLC (hereinafter, the applicant) with respect to the proposed exemption. In the letter, the applicant requested that several revisions be made to section II, section III, and the Summary of Facts and Representations of the exemption, as proposed. In addition, the applicant requested that the Department clarify whether a specific transaction fell within the scope of the exemption.

1. *Section II.* With respect to this section of the proposed exemption, EquiLend requested that:

A. The phrase ''to the extent applicable the procedures regarding the securities lending activities'', as such phrase appears in section II(a), be replaced with ''to the extent an applicable exemption is required, the securities lending transactions'';

B. The phrase ''a plan of an Equity Owner (Equity Owner Plan)'', as such phrase appears in section II(f)(1)(A), be replaced with ''Equity Owner Plan''; and

C. The sentence ''This requirement may be met by including such notification in the participation, subscription or other user agreement required to be executed by each participant in EquiLend.'' be added at the end of section II(c).

The applicant states that the proposed revisions described above provide clarity and/or consistency to the exemption. The Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the applicant and, accordingly, has revised section II of the final exemption.

2. *Section III.* With respect to this section of the proposed exemption, EquiLend requested that:

A. The definition of the term ''authorizing fiduciary'', as contained in section III(b) of the proposed exemption, be modified by—

(i) Deleting the phrase ''unrelated to'' from the first sentence of section III(b);

(ii) Adding the phrase ''provided that Commingled Investment Funds and Equity Owner Plans maintained by such Owner Lending Agent or an affiliate will not be deemed affiliates of such Owner Lending Agent for purposes of this subparagraph (2)'' at the end of section III(b)(2); and

(iii) Adding the phrase ''except in the case of an Equity Owner Plan'' to the end of the second to the last sentence of section III(b).

B. The definition of the term ''Owner Lending Agent'', as contained in section III(c) of the proposed exemption, be amended by adding the following italicized language—

''*The term Owner Lending Agent means an Equity Owner in its capacity as a fiduciary of a plan acting as securities lending agent in connection with loans of plan assets that are securities.*''

The applicant states that the proposed revisions described above brings clarity and consistency to the exemption. Specifically, the applicant represents that the modification described in (i) of this paragraph is being requested to ensure that the first sentence of section III(b) is consistent with the rest of section III(b) as well as with section II(f)(1)(A) of the exemption. In addition, the applicant states that the modification described in (ii) of this paragraph is being requested in order to clarify that certain transactions would not inadvertently result in a plan fiduciary being unable to prospectively authorize the use of EquiLend. As an example, the applicant states that a bank borrowing securities (through EquiLend) from, and providing cash collateral to, a collective trust fund managed by an Equity Owner would customarily receive a rebate from the collective trust fund on earnings generated by such collateral. According to the applicant, the rebate of earnings on the collateral received by the bank may affect the ability of the bank under the exemption to prospectively authorize the use of EquiLend by an Equity Owner (as Owner Lending Agent) to lend securities held by the bank's own plan since section III(b) of the proposed exemption requires that a plan fiduciary be ''independent'' of the Owner Lending Agent. Under that definition, a fiduciary is not considered independent of an Owner Lending Agent if such fiduciary receives any compensation from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described in the exemption. The applicant states that the proposed modification as it applies to Commingled Investment Funds and Equity Owner Plans is consistent with the intent of the exemption.

The Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the applicant and, accordingly, has revised the final exemption.

3. *Summary of Facts and Representations.* With respect to this section of the proposed exemption, the applicant stated that in October 2001, EquiLend LLC changed its name to EquiLend Holdings LLC and, in November 2001, The Chase Manhattan Bank merged with Morgan Guaranty Trust Company of New York with the resulting bank being named JP Morgan Chase Bank. In addition, the applicant further requested that the Department clarify that:

A. The term ''members'', as such term appears throughout the Summary of Facts and Representations, refers to the entities that participate in EquiLend and not merely to the entities that have an ownership interest in EquiLend; and

B. The prohibition with respect to participation in EquiLend by an Equity Owner Plan, as discussed in Paragraph 5(E) of the Summary, is inapplicable to the extent that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants (other than on behalf of the Equity Owner Plans) is equal to or greater than $10 billion.

The applicant also sought the addition of the following as a footnote at the end of Paragraph 7—

> However, the applicant requests that such authorizing fiduciary be deemed to have given the required authorization unless such authorizing fiduciary objects in writing to the purchase or licensing of a specific product to the Owner Lending Agent within 15 days after the disclosure of the information described above. In addition, such requirement for prior written authorization shall not apply to any such purchase or licensing by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan.

The purpose of the proposed clarifications and addition described above, the applicant states, is to update and provide consistency to the

exemption. The Department has determined that it is appropriate to clarify and modify the exemption in the manner requested by the applicant and, accordingly, has revised the final exemption.

4. *Scope of Exemption.* The applicant states that it is possible that a lending agent, upon its appointment by an Equity Owner, may seek to use EquiLend on behalf of an Equity Owner Plan and/or a plan unrelated to an Equity Owner. The applicant inquires whether, in this situation, such arrangement falls within the scope of the exemption. If not, the applicant inquires further whether the arrangement described above constitutes a prohibited transaction for which additional exemptive relief is necessary.

It is the view of the Department that the use of EquiLend by a lending agent appointed by an Equity Owner is outside the scope of the relief provided by this exemption. In this regard, the Department notes that the exemption does not extend relief to the participation in EquiLend's electronic platform by a lending agent appointed by an Equity Owner. Rather, with respect to such participation, the exemption provides relief solely to an Owner Lending Agent (see section II).

The Department notes that any determination as to whether the arrangement described above constitutes a prohibited transaction is inherently factual in nature. In this regard, the Department notes that a violation of section 406 of ERISA would occur if the decision of a lending agent appointed by an Equity Owner to use EquiLend on behalf of a plan is part of an agreement, arrangement, or understanding in which a fiduciary caused plan assets to be used in a manner designed to benefit a party in interest or if the lending agent has an interest in the transaction which affects his judgment as a fiduciary.

After giving full consideration to the entire record, including the written comment submitted by the applicant, the Department has decided to grant the exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11026) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For Further Information Contact: Christopher Motta of the Department, telephone (202)693–8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of June, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–14222 Filed 6–5–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–071)]

NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee.

DATES: Wednesday, June 19, 2002, from 8 a.m. to 5 p.m..

ADDRESSES: NASA Headquarters, Room MIC–5 (5H46), 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Brad Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introduction
—Program Issues and Status
—OBPR Plans
—Concepts for New Initiatives
—Proposed PSAS Activities 2002–2003
—Discussion and Summary
—Writing Assignments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 30, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–14122 Filed 6–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–072)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, NASA–NIH Advisory Subcommittee

and Life Sciences Advisory Subcommittee; Joint Meeting.

DATES: Wednesday, June 19, 2002, 8 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E St., SW., MIC–6, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. David Tomko, Code UB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Update from the Chief Scientist
—OBPR Associate Administrator Report
—Bioastronautics Research Division Update
—Discussion
—Working Lunch—Science Talk—TBD
—Fundamental Biology Research Division Update
—Flight Programs Report
—STS–107 Science Update (July 19, 2002 Launch)
—STS–107 Education and Public Outreach
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 30, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–14123 Filed 6–5–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26–ISFSI, ASLBP No. 02–801–01–ISFSI]

Pacific Gas and Electric Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions for hearing and for leave to intervene and to preside over the following proceeding: Pacific Gas and Electric Company, Diablo Canyon Power Plant (Independent Spent Fuel Storage Installation).

This Licensing Board is being established pursuant to an April 12, 2002 ''Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the Diablo Canyon Independent Spent Fuel Storage Installation [(ISFSI)]'' (67 Fed. Reg. 19,600 (Apr. 22, 2002)). The proceeding involves an application by Pacific Gas and Electric Company for the issuance of a license under the provisions of 10 C.F.R. Part 72, to store spent fuel and other radioactive material in an ISFSI on the Diablo Canyon Power Plant site in San Luis Obispo County, California. Intervention petitions/hearing requests regarding the license were filed by Lorraine Kitman (May 8, 2002); San Luis Obispo County Supervisor Peg Pinard and the Avila Valley Advisory Council (May 22, 2002); and the San Luis Obispo Mothers for Peace, on behalf of itself and other organizations (May 22, 2002).

The Board is comprised of the following administrative judges:

Administrative Judge G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 31st day of May, 2002.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–14172 Filed 6–5–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27534]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 31, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 24, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 24, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70–9901)

Energy East Corporation (''Energy East''), a registered holding company, Eagle Merger Corporation (''Eagle''), both located at P.O. Box 12904, Albany, New York 12212–2904, and RGS Energy Group, Inc. (''RGS''), 89 East Avenue, Rochester, New York 14649–0001 (together, ''Applicants''), have filed with the Commission a joint application under sections 3(a)(1), 9(a), 10, and 11(b) of the Act and rule 54 under the Act.

I. Summary of Proposal

As described in more detail below, Energy East proposes that the Commission approve: (a) Energy East's acquisition, by means of the merger described below (''Merger''), all of the issued and outstanding common stock of RGS (''RGS Common Stock''); (b) Energy East's indirect acquisition of all

of the nonutility activities, businesses and investments of RGS; (c) Energy East's retention of RGS as an intermediate holding company; (d) the operation of post-Merger Energy East as a combination electric and gas utility company; (e) the acquisition of shares of common stock of New York State Electric & Gas Corporation (''NYSEG''), a wholly owned combination gas and electric utility subsidiary of Energy East, by RGS; (f) the acquisition by Eagle of RGS; (g) the acquisition of Eagle's shares by Energy East; and (h) the exemption of RGS from registration as a holding company under section 3(a)(1) of the Act.

Under the terms of an Agreement and Plan of Merger (''Merger Agreement''), dated February 16, 2001,[1] RGS will be merged with and into Eagle, a New York corporation, which will be a wholly-owned subsidiary of Energy East at the effective time of the Merger, with Eagle being the surviving corporation. Eagle will continue to conduct RGS's businesses under the name ''RGS Energy Group, Inc.'' as a direct, whollyowned subsidiary of Energy East.

Energy East would purchase all common shares of RGS for: (i) $39.50 in cash per share; (ii) shares of Energy East common stock valued at $39.50 (subject to restrictions on the maximum and minimum number of shares of Energy East common stock to be issued); or (iii) a combination of cash and Energy East common stock. Each RGS shareholder would be able to elect the form of consideration that the shareholder wishes to receive, subject to proration, so that 55 percent of RGS shares would be exchanged for cash and 45 percent would be exchanged for Energy East common stock.[2] Each RGS share converted into Energy East common stock would receive not less than 1.7626 and not more than 2.3838 shares of Energy East common stock, depending on the average closing price of Energy East common stock during a 20-day trading period ending two trading days prior to the effective time of the Merger.[3] In addition, Applicants state that Energy East will assume approximately $1.0 billion of RGS's debt.

As a result of these transactions, RGS will become a direct subsidiary of Energy East. Rochester Gas & Electric Corporation (''RG&E''), a gas and electric utility company and subsidiary of RGS, and the nonutility subsidiaries of RGS will continue as subsidiaries of RGS and will become indirect subsidiaries of Energy East. Applicants state that as soon as practicable after the effective time of the Merger (but in no event later than five days following the effective time), Energy East will transfer all of NYSEG's common stock to RGS, so that NYSEG and RG&E can be operated under a combined management structure.

II. Parties to the Merger

A. Energy East and Subsidiaries

Energy East is a registered public utility holding company, which, through its subsidiaries, is an energy services and delivery company with operations in New York, Connecticut, Massachusetts, Maine, and New Hampshire, serving approximately 1,419,000 electricity customers and approximately 614,000 natural gas customers. Energy East has corporate offices in New York and Maine. Energy East's common stock is publicly traded on the New York Stock Exchange under the symbol ''EAS.''

Energy East holds direct or indirect interests in eight public utility companies, each of which is wholly owned by companies within the Energy East system unless otherwise noted: (1) NYSEG;[4] (2) Central Maine Power (''Central Maine''); (3) Maine Electric Power Company, Inc. (''MEPCo'') (Central Maine owns 78.3% voting interest in MEPCo);[5] (4) NORVARCO (NORVARCO holds a 50% general partnership interest in Chester SVC Partnership, a general partnership which owns a static var compensator located in Chester, Maine, adjacent to MEMPCo's transmission interconnection;[6] an electric utility company under the Act); (5) Maine Natural Gas, Corporation, (6) Connecticut Natural Gas Corporation (''CNGC''); (7) The Berkshire Gas Company (''Berkshire Gas''); and (8) The Southern Connecticut Gas Company[7] (collectively, ''Energy East Utility Subsidiaries''). Energy East also has a number of direct and indirect nonutility subsidiaries, the retention of which were either approved or jurisdiction was reserved in the Merger Order.[8]

For the year ended December 31, 2001, electric revenues of approximately $2,504,896,000 and natural gas revenues of approximately $1,026,124,000 accounted for approximately 67% and 27%, respectively, of Energy East's gross operating revenues. Energy East's utility operating income and utility net income available for common stock were $642,939,000 and $246,720,000, respectively. Consolidated assets of Energy East and its subsidiaries as of December 31, 2001, were approximately $7.3 billion, consisting of $3.6 billion in net utility plant and $3.7 billion in other utility and nonutility assets. For the year ended December 31, 2001, consolidated operating revenues, operating income and net income for Energy East and its subsidiaries were approximately $3,759,787,000, $636,888,000, and $187,607,000, respectively.

B. RGS and Subsidiaries

RGS is the parent company of Rochester Gas & Electric Corporation (''RG&E''), a gas and electric utility company serving upstate New York. Incorporated in 1998 in the State of New York, RGS became the holding company

[1] The shareholders of RGS approved the Merger with Energy East at a meeting held on June 15, 2001. Energy East and RGS have submitted applications requesting approval of the Merger and/or related matters to the appropriate state and federal regulators, including the New York Public Service Commission, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and the Federal Communications Commission. Applicants have also made the required filings with the Antitrust Division of the United States Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Applicants state that favorable responses have been received by the Applicants from each of these regulators.

[2] If RGS shareholders owning more than 55% of RGS shares elect to receive cash, the number of RGS shares converted into cash will be less than the number elected. Similarly, if RGS shareholders owning more than 45% of RGS shares elect to receive Energy East shares, the number of RGS shares converted into stock will be less than the number elected. For tax reasons more fully explained in the Merger Agreement, Energy East may have to increase the number of RGS shares converted into Energy East shares and decrease the number of RGS shares converted into cash. In the alternative, RGS may elect under certain circumstances to have the Merger restructured so that Eagle would merge with and into RGS and RGS would be the surviving entity.

[3] For example, based on Energy East's closing price of $19.14 on February 16, 2001, RGS shareholders who choose to receive Energy East common stock would receive 2.0637 Energy East shares for each RGS share.

[4] NYSEG, a regulated public utility incorporated under the laws of the State of New York, is a combination electric and gas utility providing delivery service to approximately 829,000 electricity customers and approximately 250,000 natural gas customers. During the period 1999 through 2001, approximately 83% of NYSEG's operating revenue was derived from electricity deliveries, with the balance derived from natural gas service.

[5] The remaining interests in MEPCo are held by Bangor Hydro Electric Company (''Bangor Hydro-Electric'') (approximately 14.2%) and Maine Public Service Company (approximately 7.5%).

[6] The remaining 50% interest in Chester SVC Partnership is held by Bangor Var Company, a subsidiary of Bangor Hydro-Electric.

[7] Southern Connecticut Gas is a utility subsidiary whollyowned by Connecticut Energy Corporation (''Connecticut Energy''), a direct subsidiary of Energy East. Connecticut Energy is an intermediate holding company subject to regulation under the Act as a subsidiary of a registered holding company and exempt from registration under section 3(a)(1) of the Act.

[8] *Energy East Corporation, et al.* HCAR No. 27224 (August 31, 2000) (''Merger Order'').

for RG&E on August 2, 1999.[9] RGS is a public utility holding company by virtue of its owning all of the common shares of stock of RG&E, a public utility company as defined in the Act. RGS, through its subsidiaries, is an energy generation and delivery, products and services company with operations in New York. RGS's common stock is publicly traded on the New York Stock Exchange under the symbol ''RGS.'' Pursuant to Commission order granting its request for an exemption under section 3(a)(1) of the Act, RGS is currently exempt from registration as a holding company.[10] Applicants request in this filing that the Commission find that RGS continues to be exempt from registration as a holding company under section 3(a)(1) of the Act, following the consummation of the Merger and its acquisition of NYSEG.

RG&E is engaged principally in the business of generating, purchasing, transmitting and distributing electricity, and purchasing, transporting and distributing natural gas. RG&E's service territory includes nine counties in upstate New York. RG&E's service territory has an area of approximately 2,700 square miles and a population of one million people. RG&E provides delivery service to approximately 353,000 electric customers and 289,000 natural gas customers. The larger cities in which RG&E serves both electric and natural gas customers are Rochester and Canandaigua. As of December 31, 2001, RG&E had 1,993 employees.

In addition to its utility subsidiary, RGS has the following direct and indirect nonutility subsidiary companies: (1) Energetix, Inc., (''Energetix'')[11] a wholly-owned subsidiary of RGS, which offers electricity and natural gas services to retail customers throughout New York; and (2) RGS Development Corporation which pursues unregulated business opportunities in the energy marketplace and provides energy systems development and management services.

RGS also holds Griffith Oil Company (''Griffith''), a wholly owned subsidiary of Energetix, which sells propane, heating oil and gasoline to approximately 123,000 customers in New York.

RGS has the following indirect nonutility subsidiaries that are currently inactive:[12] New York Nuclear Operating Company LLC (''NYNOC''),[13] a partially owned subsidiary of RG&E formed to investigate the operation of nuclear power plants; Moore Brothers, a wholly owned subsidiary of Griffith, formed to import petroleum products into New Jersey; McKee Road, a wholly owned subsidiary of Griffith formed to hold terminal property and other real estate property related to utility operations; [14] Griffith Energy, a wholly owned subsidiary of Griffith, and Sugar Creek Corporation, a wholly owned subsidiary of Energetix acquired in conjunction with RGS's acquisition of Griffith.

RGS also has an indirect subsidiary outside the United States, Burnwell Gas Corporation of Canada (''Burnwell''), which is a wholly owned subsidiary of Griffith. Burnwell, located in Stevensville, Ontario, is a company through which various Burnwell subsidiaries purchase propane. Avrimac Corporation (''Avrimac''), a wholly-owned subsidiary of Griffith, through its subsidiaries (Seimax Gas, Burnwell Gas of Red Creek, Burnwell Gas of Alden, Burnwell Gas Distributors, Burnwell Gas of Franklinville, Burnwell Gas of Dansville and Burnwell Gas of Newark), sells propane and a limited selection of electric gas appliances in Western and Central New York. Seimax Garage Corporation, another Avrimac subsidiary, provides repair services to the Burnwell Companies' truck fleet.

For the year ended December 31, 2001, electric revenues of approximately $728,099,000 and gas revenues of approximately $311,377,000 accounted for approximately 70% and 30%, respectively, of RGS's consolidated gross utility revenues. RGS's utility operating income and utility net income available for common stock were $134,565,000 and $69,950,000, respectively. Consolidated assets of RGS and its subsidiaries as of December 31, 2001, were approximately $2.5 billion, consisting of $1.2 billion in net utility plant and $1.3 billion in other utility and nonutility assets. For the year ended December 31, 2001, consolidated operating revenues, operating income and net income for RGS and its subsidiaries were approximately $1,530,492,000, $137,328,000 and $73,040,000, respectively.

III. Proposed Merger and Subsequent Corporate Structure

Pursuant to the Merger Agreement, RGS will merge with and into Eagle, with Eagle being the surviving corporation. Eagle will continue to conduct RGS's businesses under the name ''RGS Energy Group, Inc.'' as a direct, wholly owned subsidiary of Energy East.

As a result of Applicants' proposed transactions, RGS will become a direct subsidiary of Energy East. RG&E and RGS's nonutility subsidiaries will continue as subsidiaries of RGS and will become indirect subsidiaries of Energy East. As soon as practicable after the effective time of the Merger (but in no event later than five days following the effective time), Energy East will transfer all of NYSEG's common stock to RGS and NYSEG and RG&E will be operated under a combined management structure.

Energy East expects to pay RGS shareholders approximately $750 million in cash consideration. Energy East intends to fund the cash consideration with the proceeds from the issuance of long-term debt and trust preferred securities.[15]

Cinergy Corp. (70–10015)

Cinergy Corp. (''Cinergy''), 139 East Fourth Street, 24AT2, Cincinnati, Ohio 45202, a Delaware corporation and registered holding company, has filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, and 11(b)(1) of the Act and rule 54 under the Act.

Cinergy requests authority through March 31, 2007 (''Authorization Period'') to (A) engage, indirectly through new or existing nonutility subsidiaries [16] to provide infrastructure services (as described below) (''Infrastructure Services'') both within and outside the United States, and (B) specifically Cinergy proposes to invest up to $500 million from time to time through the Authorization Period in one or more new or existing companies that derive or will derive substantially all of their operating revenues from the sale of Infrastructure Services (''IS

[9] *Rochester Gas and Electric Holdco,* HCAR No. 26991 (March 16, 1999).

[10] *Id.*

[11] Energetix has authorization from FERC to engage in sales for resale of electricity at market-based rates and it owns no generation, transmission or distribution facilities. Energetix's subsidiary companies are Griffith Oil Co., Inc., an oil and propane distribution company in New York, and Avrimac Corporation, which through its subsidiaries sells propane and a limited selection of electric and gas appliances in Western and Central New York. Energetix and its subsidiaries have 602 employees and operate 29 customer service centers.

[12] In the event that Energy East seeks to reactivate any of the inactive companies after the consummation of the Merger, Energy East states that it will file a post-effective amendment seeking authorization to engage in the proposed activities if such authorization is required under the Act.

[13] RG&E holds a 20.24% interest in NYNOC.

[14] McKee Road currently holds no real property.

[15] Applicants have filed a post-effective amendment with the Commission under the Act with respect to ongoing financing activities, intra-system services and other matters pertaining to Energy East and RGS after the Merger. (SEC File No. 70–9609).

[16] Any such subsidiaries would be held as direct or indirect subsidiaries of Cinergy, provided that none of the subsidiaries would be held as direct or indirect subsidiaries of CG&E or PSI or any other Cinergy utility subsidiary.

Subsidiaries''). Infrastructure Services will specifically include:

• Design, construction, retrofit and maintenance of utility transmission and distribution systems, including erection of transmission towers and poles, trenching and burying of underground conduits, construction and maintenance of substations and electrical vaults, storm restoration services involving electrical transmission and distribution systems, and splicing, installation and repair of electrical conductors;

• Installation and maintenance of natural gas pipelines and laterals, water and sewer pipelines, and underground and overhead telecommunications networks; and

• Installation and servicing of meter reading devices and related communications networks, including fiber optic cable.

Cinergy requests that the Commission reserve jurisdiction over any such sales of Infrastructure Services in any country other than the United States and Canada pending completion of the record. Investments in any IS Subsidiary may take the form of an acquisition, directly or indirectly, of the stock or other equity securities of a new subsidiary or of an existing company and any subsequent purchases of additional equity securities and any loans or cash capital contributions to any such company. In addition, any guarantee provided by Cinergy in respect of any payment or performance obligation of any IS Subsidiary will be counted against the proposed investment limit. Cinergy will fund investments in IS Subsidiaries using available cash or the proceeds of financing, as authorized by Commission order dated June 23, 2000 (HCAR No. 27190) (''June 2000 Order''). Any guarantees provided by Cinergy in respect of any IS Subsidiary would also count against Cinergy's current guarantee authority in the June 2000 Order.

Any Infrastructure Services performed by any IS Subsidiaries for any associate, utility companies (as such terms are defined under the Act) will be conducted at cost and otherwise in accordance with the service agreements approved by Commission order dated May 4, 1999 (HCAR No. 27016).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14203 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25599]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 31, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 25, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

The Fulcrum Trust [File No. 811–8278]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 28, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $19,448 incurred in connection with the liquidation were paid by First Allmerica Financial Life Insurance Company.

Filing Dates: The application was filed on March 22, 2002, and amended on May 29, 2002.

Applicant's Address: 440 Lincoln Street, Worcester, MA 01653.

Belstar Trust [File No. 811–21045]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on May 2, 2002, and amended on May 23, 2002.

Applicant's Address: 375 Park Ave., Suite 3607, New York, NY 10152.

Dreyfus Strategic Governments Income, Inc. [File No. 811–5552]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 22, 2000, applicant transferred its assets to Dreyfus A Bonds Plus, Inc., based on net asset value. Expenses of $129,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Date: The application was filed on May 17, 2002.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Dreyfus U.S. Treasury Short Term Fund [File No. 811–5077]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 23, 2001, applicant transferred its assets to Dreyfus Short-Intermediate Government Fund, based on net asset value. Expenses of $60,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Date: The application was filed on May 17, 2002.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Daily Income Fund, Inc. [File No. 811–2477]

Daily Dollar Reserves, Inc. [File No. 811–3555]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By June 21, 1993, each applicant had transferred its assets to Short Term Income Fund, Inc., based on net asset value. Each applicant incurred $43,000 in expenses in connection with the reorganizations, which were paid by Reich & Tang Asset Management, LLC, investment adviser to both applicants.

Filing Dates: The applications were filed on March 25, 2002. Daily Dollar Reserves, Inc. filed an amended application on May 17, 2002.

Applicants' Address: 600 Fifth Ave., New York, NY 10020.

Tax-Free Instruments Trust [File No. 811–3337]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 1,

2000, applicant transferred its assets to Money Market Obligations Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on May 10, 2002.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Back Bay Funds, Inc. [File No. 811–8339]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2001, applicant made a liquidating distribution to its sole shareholder based on net asset value. Expenses of $6,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on May 2, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

Merrill Lynch Asset Income Fund, Inc. [File No. 811–7181];

Merrill Lynch Asset Growth Fund, Inc. [File No. 811–7183]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 13, 2000, each applicant transferred its assets to Merrill Lynch Global Allocation Fund, Inc., based on net asset value. Expenses of $51,980 and $51,843, respectively, incurred in connection with the reorganizations were paid by the surviving fund.

Filing Date: The applications were filed on May 7, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08543–9011.

Olde Custodian Fund [File No. 811–5256]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By September 13, 2001, all shareholders of applicant (other than applicant's distributor) had redeemed their shares at net asset value. Expenses of approximately $38,158 incurred in connection with the liquidation were paid by Olde Asset Management, applicant's investment adviser, and H.R. Block Financial Advisors, Inc., applicant's distributor.

Filing Date: The application was filed on April 24, 2002.

Applicant's Address: 751 Griswold, Detroit, MI 48226.

Global Utility Fund, Inc. [File No. 811–5695]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 21, 2001, applicant transferred its assets to Prudential Utility Fund, a series of Prudential Sector Funds, Inc., based on net asset value. Expenses of $328,125 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on April 30, 2002.

Applicant's Address: Gateway Center Three, 100 Mulberry Street, Newark, NJ 07102–4077.

Program for the Accumulation of Shares of Technology Fund [File No. 811–1146]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On June 8, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $150 incurred in connection with the liquidation were paid by applicant's depositor, Deutsche Investment Management Americas Inc.

Filing Date: The application was filed on April 22, 2002.

Applicant's Address: c/o Deutsche Investment Management Americas Inc., 222 South Riverside Plaza, Chicago, IL 60606.

Battery Park Funds, Inc. [File No. 811–7675]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 29, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $59,000 incurred in connection with the liquidation were paid by applicant's investment adviser, Nomura Corporate Research and Asset Management Inc.

Filing Dates: The application was filed on December 26, 2001, and amended on May 29, 2002.

Applicant's Address: Nomura Corporate Research and Asset Management Inc., 33 Wood Ave. South, 4th Floor, Iselin, NJ 08830.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14136 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25597; File No. 812–12777]

Metropolitan Series Fund, Inc., et al.; Notice of Application

May 30, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: Metropolitan Series Fund, Inc. (''Metropolitan Series'') and MetLife Advisers, LLC (''MetLife Advisers'') (together, the ''Applicants'')

Summary of Application: Applicants seek an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act'') exempting each life insurance company separate account supporting variable life insurance contracts (and its insurance company depositor) that may invest in shares of an existing portfolio of the Metropolitan Series (an ''Existing Fund'') or a ''Future Fund,'' as defined below, from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit such separate accounts (''VLI accounts'') to hold shares of any Existing Fund or Future Fund (each, a ''Fund'; collectively, the ''Funds'') when the following other types of investors also hold shares of that Fund: (1) A VLI account of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI account, (2) a Fund's investment adviser (representing seed money investments in the Fund), (3) a life insurance company separate account supporting variable annuity contracts (a ''VA account''), and/or (4) a qualified pension or retirement plan (a ''Plan'' or ''Qualified Plan''), as defined below.

Filing Date: The application was filed on February 8, 2002, and amended and restated on May 23, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 24, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit

or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

*ADDRESSES:*Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Thomas M. Lenz, Esq. and Christopher A. Martin, Esq., Metropolitan Life Insurance Company, 501 Boylston Street, Boston, MA 02116. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. As used herein, a Future Fund is any investment company (or investment portfolio or series thereof), other than an Existing Fund, designed to be sold to VLI accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment subadvisers, investment managers, administrators, principal underwriters, or sponsors. As used herein, Plan or Qualified Plan means any trust, plan, account, contract, or annuity described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), and 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code''), and any other trust, plan, account, contract, or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii).

2. The Metropolitan Series, a Maryland corporation formed on November 23, 1982, is registered under the Act as an open-end management investment company and is comprised of 23 portfolios. As of December 31, 2001, the Metropolitan Series had 3 billion shares of authorized common stock at $0.01 par value per share. Each of the Existing Funds is managed by a Board of Directors (''Board''), and Metropolitan Life Insurance Company (''MetLife''), a New York domiciled life insurance company and wholly owned subsidiary of MetLife, Inc., a publicly owned Delaware corporation, serves as the principal underwriter and distributor of the Existing Funds.

3. MetLife Advisers, a Delaware limited liability company, is the investment adviser for the Metropolitan Series and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. MetLife Advisers, an indirect wholly owned subsidiary of MetLife, became the investment manager of each portfolio of the Metropolitan Series on May 1, 2001. Prior to that time, MetLife served as investment manager to the Metropolitan Series. Prior to January 1, 2001, MetLife Advisers was a Massachusetts corporation called New England Investment Management, Inc., which was an indirect wholly owned subsidiary of MetLife. On January 1, 2001, New England Investment Management, Inc. converted to a limited liability company named New England Investment Management LLC pursuant to Delaware law. New England Investment Management LLC changed its name to MetLife Advisers, LLC on May 1, 2001.

4. The Existing Funds and Future Funds may offer their shares to VLI and VA accounts (''Participating Separate Accounts'') of various life insurance companies (''Participating Insurance Companies'') to serve as an investment medium to support variable life insurance contracts and variable annuity contracts (together, ''Variable Contracts'') issued through such accounts. Each VLI and VA account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the Company's state of domicile. As such, the assets of each are or will be the property of the Participating Insurance Company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account is or will not be chargeable with liabilities arising out of any other business that the Participating Insurance Company may conduct. The income, gains, and losses, realized or unrealized from such an account's assets are or will be credited to or charged against the account without regard to other income, gains, or losses of the Participating Insurance Company. If a VLI or VA account is registered as an investment company, it is or will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes such a registered VLI or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. The Funds will sell their shares to registered VLI and VA accounts only if each Participating Insurance Company sponsoring such a VLI or VA account enters into a participation agreement with the Fund. The participation agreements define or will define the relationship between each Fund and each Participating Insurance Company and memorialize or will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI or VA account covered by the agreement and for complying with all applicable requirements of State and Federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts. The participation agreements also memorialize or will memorialize, among other matters, the fact that, with regard to compliance with Federal securities laws, unless the agreement specifically states otherwise, the Fund's obligations relate solely to offering and selling its shares to VLI and VA accounts covered.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI and/or VA accounts of two or more insurance companies that are not affiliated persons of each other is referred to herein as ''shared funding.''

7. Applicants propose that each Existing Fund and any Future Fund may offer and sell its shares directly to Qualified Plans. Changes in the Federal tax law have created the opportunity for each Existing Fund and any Future Fund to substantially increase its net assets by selling shares to Qualified Plans. Most of the plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The plans that qualify under Sections 401(a) and 501(a) will also be subject to, and will

be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), applicable to either defined benefit or to defined contribution profit-sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' These plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement. Existing Fund and any Future Fund shares sold to such Qualified Plans would be held by the Trustees of said Plans as required by Section 403(a) of ERISA. As noted elsewhere in this Application, pass through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA.

8. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Existing Series. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 3, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

9. As a result of this exception to the general diversification requirement, qualified pension and retirement plans may select the Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance or annuities, respectively. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts, and Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) of the Act, and Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b) of the Act to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered VLI account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company,'' and then, only where scheduled premium variable life insurance contracts are issued through such VLI accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VA account of the same insurance company or any other insurance company. Likewise, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VLI account of the same insurance company or any other insurance company that issues flexible premium variable life insurance contracts.

3. In addition, the relief granted by Rule 6e–2(b)(15) under the Act is not available with respect to a scheduled premium VLI account that owns shares of an underlying management company that also offers its shares to VLI or VA accounts funding Variable Contracts of one or more unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Section 9(a), and from Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium VLI account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium VLI account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. Also, Rule 6e–3(T) does not contemplate extended mixed and shared funding.

5. Applicants maintain, as discussed below, that there is no policy reason for the sale of Fund shares to Qualified Plans to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provide that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans while allowing

Participating Insurance Companies and their VLI accounts to enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a qualified pension and retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Funds may also sell their shares to qualified pension and retirement plans. Rather, Applicants assert that the proposed sale of shares of the Funds to Qualified Plans, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

8. Applicants recognize that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting Qualified Plans to invest in the Funds. Applicants have concluded that the addition of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. Even if a material irreconcilable conflict involving Qualified Plans arose, the trustees of (or participants in) the Qualified Plans could simply redeem their shares and make alternative investments.

9. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Participating Insurance Companies and their VLI accounts investing in the Existing Funds and Future Funds as well as their principal underwriters that currently invest or in the future will invest in the Funds.

10. There is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the Act's provisions, including class exemptions in the context of mixed and shared funding. Such class exemptions have included, among other things, exemptions permitting the sale of shares by unnamed underlying funds to Participating Separate Accounts and Qualified Plans.

11. The Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to Qualified Plans in addition to offering their shares to separate accounts of affiliated or unaffiliated insurance companies which issue either or both variable annuity contracts or variable life insurance contracts. The Order sought in this Application is identical to these precedents in all material respects with regard to the conditions Applicants proposed be imposed on Participating Separate Accounts and Qualified Plans in connection with investment in the Funds. The Commission has also granted exemptions similar to those requested herein where a fund's shares would not be sold directly to Qualified Plans. Applicants believe that the same polices and considerations that led the Commission to grant such exemption to other applicants are present here.

12. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the Act provide, in effect, that the fact that an individual disqualified under Section 9(a)(1) or (2) of the Act is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of Section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the Act provide, in effect, that the fact that any company disqualified under Section 9(a)(1) or (2) of the Act is affiliated with the insurance company would not, by virtue of Section 9(a)(3) of the Act, disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act from requirements of Section 9 of the Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Those Rules further recognize that it also is unnecessary to apply Section 9(a) of the Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may use a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding.

15. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Separate Accounts, insurance companies, or Qualified Plans use such Funds. Applying the requirements of Section 9(a) of the Act because of investment by the separate accounts of other insurers and Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contractowners. Moreover, in the case of Qualified Plans, the Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of the Funds except by virtue of its holding 5% or more of a Fund's shares.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Pass-through voting privileges will be provided with respect to all registered variable contractowners so long as the Commission interprets the Act to require pass-through voting privileges for variable contractowners.

17. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of contractowners if such instructions would result in certain changes in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

18. Rules 6e–2 and 6e–3(T) under the Act recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, Rule 6e–3(T)'s corresponding provisions for flexible premium variable life insurance undoubtedly were adopted in recognition of the same factors.

19. With respect to the Qualified Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to an ERISA-covered Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the ERISA-covered Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants.

20. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, the purchase of shares of the Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

23. The prohibitions on mixed and shared funding might reflect some concern with possible divergent

interests among different classes of investors. When Rule 6e–2 under the Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, the Commission staff contemplated underlying funds with public shareholders and with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contractowners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

24. However, for reasons unrelated to the Act, IRS Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for most variable contracts (including variable life contracts) in new Section 817(h). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Section 817(h) of the Code provides, in effect, that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a unit investment trust separate account that invests solely in a publicly available mutual fund will generally not be adequately diversified. In addition, any underlying mutual fund, including the Funds, that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

25. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

26. Shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer(s) will be required to withdraw its Participating Separate Account's investment in the relevant Fund.

27. The right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

28. However, a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractholders' voting instructions should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw the Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal. There is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if it funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program.

29. The Funds will not be managed to favor or disfavor any particular Participating Insurance Company or type of Variable Contract. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, and insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and any Future Funds. Also, permitting mixed and shared funding will facilitate the establishment of additional Future Funds serving diverse goals. The broader base of contractowners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.

30. Applicants do not believe that the sale of the shares of the Funds to Qualified Plans will increase the

potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contractowners in the Participating Separate Accounts or to the participants under the Qualified Plans.

31. Applicants considered whether there are any issues raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, VLI accounts, and VA accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

32. Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, Treasury Regulations specifically permit qualified pension or retirement plans and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest.

33. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c–1 under the Act (without the imposition of any sales charges) to provide proceeds to meet distribution needs. A Variable Contract will make distributions in accordance with the terms of the Contract. Likewise, a Qualified Plan will make distributions in accordance with the terms of the Plan.

34. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contractowners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-terms gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Separate Accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of an Existing Fund or any Future Fund.

35. Applicants considered whether it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans, and determined it is possible, as indicated below. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

36. Applicants also considered whether there are any conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

37. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

38. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the Federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

39. Applicants recognize that the foregoing is not an all-inclusive list but rather is representative of issues which

they believe are relevant to this Application. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Funds with respect to Qualified Plans is not substantially dissimilar from the Funds' current use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

40. Applicants note that when the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which currently make it possible for shares of the Funds to be sold to Qualified Plans without adversely affecting the tax status of the insurer's Variable Contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined (b)(15) of Rule 6e–3(T) and might well have broadened the exclusivity provision of that paragraph at that time to include Qualified Plans had this possibility been apparent.

41. Various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a fund's medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

42. Use of the Funds as common investment vehicles for Variable Contracts would reduce or alleviate the above-mentioned concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Funds' investment advisers and subadvisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and extended mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

43. Mixed and shared funding and extended mixed and shared funding benefits variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners through greater diversification and by making the addition of new portfolios more feasible.

44. Applicants assert that, regardless of the type of shareholder in any of the Funds, the investment advisers and subadvisers are or would be contractually obligated to manage such Fund solely and exclusively in accordance with that Fund's investment objectives, policies, and restrictions as well as any guidelines established by the Board. The investment advisers and subadvisers of each Fund work with a pool of money and do not take into account the identity of the shareholders. Thus, the Existing Funds are and any Future Fund will be managed in the same manner as any other mutual fund.

45. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

46. Applicants also note that the Commission has issued orders permitting mixed funding and shared funding. Applicants' proposal for mixed and shared funding and extended mixed and shared funding complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), and 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions for Relief

If the requested order is granted, Applicants consent to the following conditions:

1.A majority of the members of the Board of each Fund will consist of persons who are not ''interested persons'' of such Fund, as defined by Section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director or directors, then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between and among the interests of the contractholders of all Participating Separate Accounts and of participants of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners, variable life insurance contractowners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. MetLife Advisers (or any investment adviser to a Fund), and any Participating Insurance Companies and Qualified Plan that executes a participation agreement, upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, ''Participants'') will report any potential or existing conflicts to the relevant

Board. Such Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Funds, and these responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested members of such Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Fund and reinvesting such assets in a different investment medium, which may include another such Fund, (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners or life insurance contractholders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw such Participating Insurance Company's separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the relevant Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contractowners and in the case of Qualified Plans, will be carried out with a view only to the interests of Plan participants. For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Fund or MetLife Advisers (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of the contractowners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contractowners, MetLife Advisers or any of its affiliates will vote its shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in the shares of the Fund), and, in particular, each such Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not, or will not be, the type of trust described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each such Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic

elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each such Fund will disclose in its prospectus that: (a) shares of such Fund may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contractowners participating in such Fund and the interests of Qualified Plans investing in such Funds may conflict; and (c) such Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Fund such reports, materials, or data as a Board may reasonably request so that the directors of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. A Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Fund governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any such Fund.

Conclusion

For the Commission, by the Division of Investment Management, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14137 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25600; File No. 812–12100]

Ameritas Life Insurance Corp., et al.; Notice of Application

May 31, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act'').

Applicants: Ameritas Life Insurance Corp. (''Ameritas''), and Ameritas Life Insurance Corp. Separate Account LLVA (''Separate Account'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act to permit the substitution of shares of the Vanguard International Portfolio for the Strong International Fund II.

FILING DATE: The application was filed by Acacia National Life Insurance Company, Acacia National Variable Life Separate Account I and Acacia National Variable Annuity Separate Account II (collectively, the ''Acacia Applicants'') on May 16, 2000, and amended and restated by the Acacia Applicants, Ameritas and Separate Account on October 16, 2001. The filing was amended and restated by Ameritas and Separate Account on February 12, 2002, April 10, 2002, and April 19, 2002. Applicants represent that they will file an amendment to the application during the notice period to conform to the representations set forth herein.

Hearing Or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 21, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Ken Reitz, Esq., Ameritas Life Insurance Corp., 5900 ''O'' Street, Lincoln, NE 68510.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Ameritas is a stock life insurance company organized in the State of Nebraska and currently licensed to sell life insurance in all 50 states and in the District of Columbia. Ameritas is a subsidiary of AmeritasAcacia Mutual Holding Company.

2. The Separate Account was established by Ameritas on August 26, 1995, to receive and invest premiums received from purchasers of certain variable annuity contracts issued by Ameritas. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. In addition, the variable annuity contracts funded by the Separate Account are registered with the Commission under the Securities Act of 1933 (''1933 Act''). The income, capital gains and capital losses incurred on the assets of the Separate Account are

credited to, or charged against, the assets of the Separate Account without regard to the income, capital gains or capital losses arising out of any other business Ameritas may conduct. In addition, the laws of the State of Nebraska, under which the Applicants were established provide that assets in each such Separate Account attributable to the annuity contracts funded by such Account are generally not chargeable with liabilities arising out of any other business which Ameritas may conduct.

3. The Separate Account currently serves as the funding vehicle for variable annuity contracts (''VA Contracts'') registered under the 1933 Act. The Separate Account is divided into separate subaccounts (''Subaccounts'') that each invest exclusively in shares of an underlying fund. Owners of the VA Contracts are currently permitted to accumulate funds, on a tax-deferred basis, based on the investment experience of the assets underlying the VA Contract. The VA Contracts may be purchased on a non-tax qualified basis or in connection with certain plans qualifying for favorable federal income tax treatment. Owners of a VA Contract can allocate premium payments to one or more Subaccounts and/or to the Fixed Account. Owners of a VA Contract may make up to 15 transfers of cash values among the Subaccounts each year without charge; transfers in excess of 15 in any year may be subject to a charge. Owners of VA Contracts are also subject to certain administrative and other charges and may be subject to certain surrender charges.

4. The Separate Account currently makes available to owners of VA Contracts a total of forty-five separate investment options, as well as the option to allocate premiums to the insurance company Fixed Account.

5. Prior to October 1, 2001, the Separate Account also offered a subaccount (''Strong Subaccount'') that invested exclusively in shares of Strong International Stock Fund II, (''Strong International''). Shares of Strong International are registered under the 1933 Act on Form N–1A (File No. 33–45108). Strong Capital Management, Inc., serves as the investment adviser for Strong International. Ameritas discontinued offering the Strong Subaccount as an investment option under VA Contracts as of October 1, 2001. Owners of VA Contracts with interests in the Strong Subaccount were, and continue to be, permitted to remain in the subaccount, but no new investments in the subaccount are being accepted.

6. Shares of Vanguard International Portfolio (''Vanguard International'') are registered under the 1933 Act on Form N–1A (File No. 33–32216). Vanguard International is a separate investment portfolio of the Vanguard Variable Insurance Fund and has been available to owners of VA Contracts since May 2001. Schroder Investment Management North America, Inc., serves as the investment adviser for Vanguard International.

7. The investment objective of both Vanguard International and Strong International is capital growth. Each fund seeks to achieve its objective by investing primarily in equity securities of foreign issuers. Neither fund is limited with respect to the nations in which investments may be made or the capitalization of the companies in which they invest.

8. Strong International and Vanguard International differ with respect to the relative emphasis placed by each fund's investment adviser on various investment criteria. As stated in the prospectus relating to Strong International, that fund's investment adviser selects securities for the fund using an investment approach that examines the investment outlook of individual countries in determining whether to invest; identifies individual investments based on rigorous, in-depth analysis of the individual characteristics of the issuer involved; and seeks to manage foreign currency risk. The investment adviser for Vanguard International considers similar factors, but with a somewhat different emphasis. Vanguard International's investment adviser first examines the investment outlook of foreign markets around the world, then determines the proportion of the fund's assets to allocate to individual countries before selecting companies' securities within such countries based upon a selection process emphasizing on-site evaluations of the companies. The adviser's investment approach results in a fund portfolio whose overall characteristics often differ substantially from those of broad international stock indexes and are therefore apt to differ substantially from time to time from the performance of such indexes.

9. Applicants propose to substitute securities of Vanguard International for securities issued by Strong International (the ''Substitution'').

10. Applicants state that although not identical, Vanguard International and Strong International afford their shareholders very similar investment opportunities. Applicants believe that the objectives and policies of Vanguard International are the same as, or sufficiently similar to, those of Strong International to assure that the core investment goals of those owners of the VA Contracts affected by the Substitution (''Affected Contractowners'') will not be frustrated and the investment expectations of Affected Contractowners can continue to be met. Further, Applicants state that the Substitution will reduce the expenses of the Affected Contractowners because Vanguard International is larger and less expensive than Strong International and because Vanguard International has a performance record that is both comparable to, and less volatile than, that of Strong International.

11. The following table summarizes the annual operating expenses to which holders of shares of Strong International have been and which holders of shares of Vanguard International are subject. The table does not include any fees or sales charges imposed by those VA contracts issued by Ameritas. The figures shown below are based on the assets of Strong International and Vanguard International as of December 31, 2001.

	Strong International (percent)	Vanguard International (percent)
Management Fees	1.00	0.16
Distribution and service (12b–1) fees	.....	.....
Other Expenses	0.03	0.27
Total before Waivers and Reductions	1.03	0.43
Waivers and Reductions	.....	.....
Total after Waivers and Reductions	1.03	0.43

12. On April 6, 2001, Applicants were notified by Strong International that it had suspended sales to new insurance company separate accounts and, on June 1, 2001, received a second notice from Strong International stating that it intended to close to existing relationships.

13. A prospectus supplement dated September 21, 2001, was distributed to all owners of VA Contracts. The supplement stated, among other things, that the Strong Subaccount would not be available as an investment option under the VA Contracts as of October 1, 2001, and that Applicants intended to file an application with the Commission to substitute other investment options for Strong International.

14. Following the date on which Ameritas is notified that the notice of this Application is to be published in the **Federal Register**, but before the date the Requested Order becomes effective,

Ameritas will forward to Affected Contractowners a notice describing the Substitution that will affect their interest in the VA Contracts, including the anticipated effective date of the Substitution. The notice will be accompanied by a copy of the portfolio prospectus for Vanguard International. This Notice will inform Affected Contractowners of (i) the anticipated effective date of the Substitution; (ii) the right of each Affected Contractowner under the VA Contracts to transfer contract values among the various Subaccounts; and (iii) the fact that any such transfer that involves a transfer from Strong International will not be subject to any administrative charge and will not count as one of the ''free transfers'' to which Affected Contractowners may otherwise be entitled. The notice will advise Contractowners that cash values attributable to investments in Strong International may be transferred to any other available Subaccount, without regard to any transfer charge or other restriction to which transfers between Subaccounts may otherwise be subject, for not less than 30 days after the effective date of the Substitution. All such transfers will be made at the relative net asset value on the date on which the Affected Contractowner elects to make the transfer.

15. Within five days after the effective date of the Substitution, Ameritas will forward to Affected Contractowners a written confirmation notice relating to the substitution transaction. The confirmation notice will (i) confirm that such transaction was carried out; (ii) again advise Affected Contractowners that cash values attributable to investments in Strong International may be transferred to any other available Subaccount, without regard to any transfer charge or other restriction to which transfers between Subaccounts may otherwise be subject, for not less than 30 days after the effective date of the Substitution; (iii) advise Affected Contractowners that no transfer made by Affected Contractowners during this period will be counted as one of the ''free'' transfers to which such owners may otherwise be entitled under the Subject Contract held; and (iv) state that Ameritas will not exercise any right reserved by it under the Subject Contracts to impose additional restrictions on transfers from cash value attributable to investment in Strong International until at least 30 days after the effective date of the Substitution.

16. As of the effective date of the Substitution, shares of Strong International held by the Strong Subaccount will be presented to Strong International for cash redemption. The proceeds of such cash redemptions will then be used to purchase the appropriate number of shares of Vanguard International. On the effective date of the Substitution, the cash values of Affected Contractowners will be transferred to Vanguard International, and the Strong Subaccount will then be eliminated. The Substitution will take place at net asset value, with no change in the contract value of any Affected Contractowner, and all cash redemptions of shares of Strong International and purchases of shares of Vanguard International will be effected in accordance with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.

17. Ameritas will bear the costs of the Substitution, including any legal, accounting and brokerage fees and expenses relating to them. Affected Contractowners will not incur any additional fees or charges as a result of the Substitution. No current fees or charges applicable under the Subject Contracts will be increased as a result of the Substitution, nor will the rights of the owners of the Subject Contracts or the obligations of Ameritas under the Subject Contracts be diminished. The Substitution will not alter in any way the annuity, life or tax benefits afforded under the VA Contracts held by any Affected Contractowner. The Substitution will not result in any adverse tax consequences to the owners of the Subject Contracts, any change in the economic interest or contract values of any such owner or any change in the dollar value of the Subject Contracts held by any Affected Contractowner. Finally, Affected Contractowners will be permitted to withdraw amounts from the VA Contracts held, or to terminate their interest in any such contract, under the conditions set forth in the contracts.

18. Applicants state that Applicants will not receive for three years from the date of the substitutions, any direct or indirect benefit from Vanguard International, its advisers or underwriters, or from affiliates of Vanguard International, its advisers or underwriters in connection with assets attributable to Contracts affected by the substitution, at a higher rate than Applicants have received from Strong International, its advisers or underwriters, or from affiliates of Strong International, its advisers or underwriters, including, without limitation, Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements. Applicants represent that the substitutions and the selection of Vanguard International was not motivated by any financial consideration paid or to be paid to Applicants or any affiliate of Applicants by Vanguard International, its advisors or underwriters, or by affiliates of them.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides, in pertinent part, that ''it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(c) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(c) of the 1940 Act approving the substitution. Applicants assert that the purposes, terms, and conditions of the Substitution are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

3. Each Subject Contract reserves to the issuing insurance company the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management company held by a Subaccount of the Separate Account. This reservation of rights is disclosed in the prospectus for the Subject Contracts.

4. Applicants assert that Vanguard International and Strong International afford their shareholders very similar investment opportunities. Applicants state that from an investment perspective, the only difference between Strong International and Vanguard International lies in the relative emphasis placed by each fund's investment adviser on various investment criteria. Applicants believe such a distinction in investment style does not require a conclusion that the proposed Substitution would not meet the standards of Section 26(c).

5. Applicants believe that the Strong International/Vanguard International substitution satisfies the standards for relief under Section 26(c), because, following the Substitution, Affected Contractowners will be invested in Vanguard International, a fund (i) with the same investment objective as, and investment policies very similar to, those of Strong International; (ii) with actual performance which has been better on a cumulative basis than that of Strong International; and (iii) that is

both larger than Strong International, and enjoys a lower management fee and lower overall expense ratio than Strong International.

Conclusion

Applicants assert that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the 1940 Act and therefore request that the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14202 Filed 6–5–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45995; File No. SR–NYSE–2002–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Initial Listing Fees for an Additional Class of Common Stock

May 29, 2002.

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 May 24, 2002, the New York Stock Exchange, Inc. (''NYSE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (''LCM'') to provide that, at the time an issuer lists an additional class of common stock on the NYSE, the listed company will be charged a fixed initial listing fee of $5,000 for that class instead of the per-share initial listing fee under the current original listing fee schedule. Presently, Section 902.02 of the LCM provides that only tracking stocks of a listed company are charged a flat initial listing fee of $5,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902.02 of the LCM to provide that when an issuer lists an additional class of common stock, it will be charged a flat initial listing fee of $5,000 for the additional class in lieu of the per-share fee schedule. Currently, Section 902.02 of the LCM specifies that only tracking stocks of a listed company are charged a flat initial listing fee of $5,000.

In 2000, in response to listed companies' desires to utilize tracking stocks to achieve strategic and financial goals, the Exchange adopted the $5,000 flat initial listing fee for tracking stocks.[3] Since adopting this flat fee for the initial listing of tracking stocks, the Exchange has noted that, from time to time, its listed companies issue additional classes of common stock other than tracking stocks. Because a tracking stock is itself an additional class of common stock, the Exchange has found it difficult to justify a material distinction in the initial listing fees between tracking stocks and other kinds of additional classes of common stock. In the Exchange's view, additional classes of common stock should be entitled to benefit from the same flat $5,000 initial listing fee as is applicable to tracking stocks. The Exchange therefore believes that by broadening Section 902.02 of the LCM to apply to any additional class of common stock of a listed company, the Exchange will be in a position to be more competitive and responsive to alternate capitalization structures, including tracking stocks and other additional classes of common stock.

The Exchange would like to clarify that the flat fee applies only when the additional class of common stock is first listed on the NYSE. The Exchange believes that the proposal is consistent with the treatment that has been afforded to tracking stocks, which are assessed fees under the regular fee schedules for both continuing annual fees and for the initial fees chargeable when issuing additional shares of an already listed class of stock.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)(5) of the Act,[4] which provides that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43164 (August 16, 2000), 65 FR 51387 (August 23, 2000) (SR–NYSE–00–15) (noting that tracking stocks are categories of common stocks of an issuer that are intended to track the value of a portion of the issuer's business).

[4] 15 U.S.C. 78f(b)(5).

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 the File No. SR–NYSE–2002–20 and should be submitted by June 27, 2002.

IV. Commission's Finding and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of Sections 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[6] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[7]

The Commission finds that the NYSE's proposed flat fee of $5,000 to issuers for an additional class of common stock is reasonable and equitable in that it allows other classes of common stock, in addition to tracking stocks, to benefit from a fixed initial listing fee in lieu of a per-share initial fee schedule. The Commission also believes that the proposal is consistent with the treatment that has been afforded to tracking stocks, a type of additional class of common stock, and should help the Exchange to be more competitive and responsive to alternate capitalization structures of its listed companies.

The NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register** to enable its listed companies engaged in transactions to benefit from the broadened flat fee for the listing of an additional class of common stock as quickly as possible. The Commission agrees that the approval of this request would enable issuers to promptly benefit from the proposed rule change. As noted above, the Commission has previously approved an initial flat fee of $5,000 for tracking stocks, a class of common stock, and therefore finds this proposal substantially similar, and consistent with the prior NYSE filing.[8] Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2002–20) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14204 Filed 6–5–02; 8:45 am]

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[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* note 3, *supra.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46008; File No. SR–Phlx–2002–24]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Emergency Committee

May 30, 2002.

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 April 24, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 20, 2002, the Exchange filed 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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 98, Emergency Committee (''Committee''), to expand the composition of the Committee to include the Exchange's Off-Floor Vice Chairman, and to adopt previously amended text of the pilot program regarding Exchange Rule 98 on a permanent basis.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

Emergency Committee

Rule 98. An Emergency Committee, consisting of the Chairman of the Board of Governors, the On-Floor Vice Chairman the Exchange, *the Off-Floor Vice Chairman of the Exchange,* and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: (1) Operation of PACE, AUTOM, or any other Exchange quotation, transaction, reporting, execution, order routing or other systems or facility; (2) operation of, and trading on, any Exchange floor; (3) trading in any securities traded on the Exchange; and (4) the operation of members' or member organizations' offices or systems. Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Governors at the Board's next regular meeting.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original Rule 19b–4 filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand the composition of the Committee to include the Exchange's Off-Floor Vice Chairman, and to affect such expansion, and the previous amendments to Exchange Rule 98, on a permanent basis.

a. *Background.* On December 23, 1999, the Commission approved amendments to Exchange Rule 98, which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.[4] The pilot was then extended through August 21, 2000;[5] through November 17, 2000;[6] through April 30, 2001;[7] through July 31, 2001;[8] through November 30, 2001;[9] and again through May 30, 2002.[10]

The Exchange originally proposed to amend Exchange Rule 98 by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,[11] and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system that is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989[12] prior to the aforementioned changes to the Exchange's governance structure. In the Original Pilot, approved by the Commission, the Exchange deleted the word ''President'' from the rule, as the Exchange no longer has a ''President,'' and included the Exchange's On-Floor Vice Chairman[13] as a member of the Committee.

b. *The Instant Proposal.* The current pilot program specifies the composition of the Committee to include the following individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee, respectively.

The Exchange represents that the proposed addition of the Off-Floor Vice Chairman to the Committee is in response to Commission comments concerning the expansion of the Committee to include off-floor representation in the decision-making process in emergency situations. Since off-floor interests would certainly be affected by any decision made by the Committee regarding the operation of the Exchange, the Exchange believes that the addition of the Off-Floor Vice Chairman would provide representation of those interests sufficient to satisfy the Commission's concerns.

The Exchange represents that meetings of the Committee shall be held at such times and places as the Committee may designate, meetings of the Committee shall be held on the call of any member of the Committee. The Exchange will use best efforts to attempt to give notice thereof by making such reasonable efforts as circumstances may permit to notify each Committee member of the meeting. Such notification may be oral, written or by publication, specifying the purposes thereof. Failure of any member of the Committee to receive actual notice of a meeting of the Committee shall not affect the power of the Committee members present at such meeting to exercise the powers of the Committee.

The Exchange represents that four out of six members of the Committee (including the proposed addition of the Off-Floor Vice Chairman) shall be sufficient to constitute a quorum for any meeting of the Committee. In the event of a vacancy on the Committee, a quorum would be a majority of all Committee members then in office.[14]

Finally, in accordance with current Exchange Rule 98, any action taken by the Committee shall be reported and submitted promptly to the Commission and to the Exchange's Board of Governors at its next regular meeting following such action.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[15] in general, and with Section 6(b)(5) in particular,[16] in that designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by permanently updating the composition of the Committee to reflect the current governance structure of the Exchange, and by adding off-floor representation to the Committee by making the Exchange's Off-Floor Vice Chairman a permanent member of the Committee. The Exchange also believes that the proposed rule change, as amended, is consistent with the Act because it continues to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to emergencies.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[4] *See* Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR–Phlx–99–42) (''Original Pilot'').

[5] *See* Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR–Phlx–2000–41).

[6] *See* Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000) (SR–Phlx–2000–76). On July 14, 2000, the Exchange filed a proposed rule change (SR-Phlx-00–63) to effect the amendments on a permanent basis. In the proposal, the Exchange discussed its views as to whether the Committee structure ensured that all Exchange interests both on and off the floor were fairly represented. Because the Committee was considering further changes to the Committee, SR-Phlx-00–63 was withdrawn on June 15, 2001.

[7] *See* Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000) (SR–Phlx–00–101).

[8] *See* Securities Exchange Act Release No. 44245 (May 1, 2001), 66 FR 23961 (May 10, 2001) (SR–Phlx–2001–44).

[9] *See* Securities Exchange Act Release No. 44653 (August 3, 2001), 66 FR 43289 (August 17, 2001) (SR–Phlx–2001–70).

[10] *See* Securities Exchange Act Release No. 45192 (December 26, 2001), 67 FR 1386 (January 10, 2002) (SR–Phlx–2001–106).

[11] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (SR–Phlx–97–31).

[12] *See* Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR–Phlx–88–36).

[13] *See* Exchange By-Law, Article IV, Section 4–2.

[14] Exchange By-law Article X, Section 10–3 provides, in relevant part, that each Standing Committee and Special Committee shall determine the manner and form in which its proceedings shall be conducted, and shall make such regulations for its government as it shall deem proper and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in the by-laws or rules, the decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] Previously, the Exchange has described ''extraordinary market or emergency conditions'' as among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. *See* letter from William W. Uchimoto, General Counsel, Phlx, to Sharon L. Itkin, Esquire, Division of Market Regulation, Commission, dated March 15, 1989.

change, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–24 and should be submitted by June 27, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis, and that the Commission permanently approve the pilot program related to Exchange Rule 98. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[19] Specifically, the Commission believes that the proposed rule change, as amended, is consistent with the requirements of the Act, by fostering investor and public interest and promoting just and equitable principles of trade, for several reasons. First, it conforms the composition of the Committee to structural amendments that were made to the Exchange's governance structure and eliminates outdated references that may be confusing. Secondly, it adds the Off-Floor Vice Chairman to the Committee, which should help to ensure that the Committee represents Exchange interests both on and off the floor. Finally, it addresses quorum requirements to ensure that the Committee will be able to meet and can operate in times of emergency.

The Commission notes that the Exchange originally amended Exchange Rule 98 relating to its Committee, in December 1999, as part of a Year 2000 contingency plan designed by the Exchange's Year 2000 Task Force. The Commission approved the Exchange's amendment to the rule on a pilot basis,[20] and noted that the amended rule gave the Committee the power to act only in true emergency situations. The pilot program was extended several times, the current extension scheduled to expire on May 30, 2002, as the Exchange and the Commission considered changes to the composition of the Committee to ensure fair representation of all Exchange interests. In this instant proposal, the Exchange believes that, by adding the Off-Floor Vice President to the Committee to represent off-floor Exchange interests, it will address these concerns. The Commission notes that, under the amended proposal being approved in this order, the Committee will consist of the Chairman of the Board of Governors, the On-Floor Vice Chairman the Exchange, the Off-Floor Vice Chairman of the Exchange, and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees.[21]

In approving the original pilot and extending it several times, the Commission requested that the Phlx consider whether the overall Committee structure ensures that all Exchange interests are fairly represented. The Commission noted that it would be concerned about a Committee structure dominated by one Exchange interest (*e.g.,* on-floor interest). In light of September 11, 2001, the establishment of a permanent emergency committee that can convene and meet quickly to make decisions has become critical. Consequently, while the Committee represents a variety of on-floor interests, the addition of the Off-Floor Vice Chairman as a member of the Committee should help to create a more balanced Committee of both on and off-floor interests that should ensure that Exchange members are adequately represented in times of emergency.

The Commission further believes that the Exchange has adequate procedures in place for calling meetings of the Committee, specifically quorum requirements for calling a Committee meeting and for implementing a Committee decision. The Commission notes, in this regard, that the quorum requirements of four out of six members should ensure the Committee can convene and take action in times of emergency. Further, consistent with the Exchange's Bylaws, in the event of a vacancy, a quorum would be a majority of all Committee members then in office. In addition, in recognition that it may be hard to convene the Committee in the event of an emergency, the Exchange has stated its commitment to use best efforts to give notice to each Committee member of the meeting. Finally, the Commission notes that, in accordance with Exchange Rule 98, any action taken by the Committee shall be immediately reported to the Commission and to the Exchange's Board of Governors.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[22] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that no comments were received on the Original Pilot or during the duration of the pilot program. The Commission therefore believes that granting accelerated approval to the proposed rule change, as amended, as well as permanent approval to the amended pilot program is appropriate and will ensure that the Committee remains in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergency situations.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2002–24), as amended, is hereby approved on an accelerated basis.

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Original Pilot, *supra* note 4. In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*i.e.,* on-floor or off-floor interest). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

[21] Under the terms of the pilot program, the Exchange also amended Exchange Rule 98 in minor respects, including deleting of the term ''President,'' including the Exchange's On-Floor Vice Chairman to the Committee, and deleting reference to CENTRAMART.

[22] 15 U.S.C. 78s(b)(2).

[23] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14138 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45996; File No. SR–Phlx–2002–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Security Required for and Termination of Equity Trading Permits

May 29, 2002.

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 March 1, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on April 2, 2002.[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 Exchange proposes to amend paragraph (i) of Exchange Rule 23, *Equity Trading Permits* (''ETPs''), to provide that ETP organizations, which are also member organizations holding equitable title to a membership, would not be required to provide the required security and to add new subsection (i)(iv) of Exchange Rule 23 to provide that the proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia (''SCCP''), or other member firms of the Exchange as described in Exchange By-Law 15–3 against the member organization's ETP holders. The Exchange also proposes to amend Exchange Rule 50, *Late Charge*, in order to allow the Exchange to terminate an ETP 14 days after the ETP holder is suspended. The text of the proposed rule change appears below. New text is in *italics;* deletions are in [brackets].

Rule 23

Equity Trading Permits.

(a)–(h) No Change.

(i) Security For Exchange Fees and Other Claims.

(i) Each ETP organization (*except any ETP organization which is also a member organization holding equitable title to a membership, legal title to which is held by an associated person of such member organization*) shall be required to provide security to the Exchange for the payment of any claims owed to the Exchange, *to Stock Clearing Corporation of Philadelphia, and to other member firms of the Exchange,* upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were the proceeds from the transfer of a membership. This security may consist of:

(A) a deposit with the Exchange in the amount of $50,000 to be held, together with all other such deposits made pursuant to this rule, in a segregated account, the proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15–3, and which may be invested by the Exchange in United States government obligations or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such ETP organization;

(B) an acceptable letter of credit from a financial institution acceptable to the Exchange, in the amount of $50,000, proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15–3; or;

(C) an acceptable guaranty by a financial institution acceptable to the Exchange guaranteeing the payment by the ETP organization, upon termination of any ETP issued to any individual affiliated with such organization, of any claims listed in By-Law 15–3 up to $50,000.

(ii) The security required to be provided pursuant to this rule shall not be calculated based upon the number of ETPs issued to affiliates of the ETP organization, but shall be the same amount regardless of the number of such ETPs issued to its affiliates. At such time as no ETP holders remain associated with the ETP organization, the proceeds of any remaining security may be applied by the Exchange in the same manner as proceeds of membership transfers under By-Law 15–3, and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

(iii) The obligation to provide security pursuant to this rule shall not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations, or ETP organizations for the previous year. Any security provided pursuant to this Rule 23(i) shall be returned at such time as the ETP organization shall have been in good standing as either a member organization, participant organization, or an ETP organization for one year.

(iv) *The proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia, or other member firms of the Exchange as described in By-Law 15–3 against the member organization's ETP holders.*

Rule 50. Late Charge

There shall be imposed upon any member, member organization, participant or participant organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, a late charge for dues, foreign currency options users' fees, fees, other charges, fines, and/or other monetary sanctions or other monies due and owed the Exchange and not paid within thirty (30) days after date of original invoice. The late charge is set at a rate of one and one half percent (1.5%) simple interest for each thirty-day period or fraction thereof, calculated on a daily basis, during which accounts payable to the Exchange remain outstanding. An account is not subject to a late charge until the unpaid balance remains outstanding at least thirty-one (31) days. The Finance Committee or its designee may waive the amount of the late charge, or a portion thereof, if the

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Christopher Solgan, Law Clerk, Division of Market Regulation (''Division''), Commission, dated April 2, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the propose rule text to reflect amendments made under SR–Phlx–2002–19 filed pursuant to Section 19(b)(3)(a)(ii) of the Act and Rule 19b–4(f)(2) thereunder. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(3)(iii) of the Act and Rule 19b–4(b)(6) thereunder.

amount falls within guidelines established by the Board of Governors. If any member, or member organization, participant or participant organization or an employee thereof shall fail to pay such fines and/or other monetary sanctions, or other monies due and owed the Exchange, including late charges, within fifty (50) days from the date of the original invoice, the Controller shall notify the Finance Committee, which shall take such action as it deems appropriate. Should such amounts due exceed $10,000, the Finance Committee shall refer the matter to the Board of Governors which shall take such action as it or its designee deems appropriate, including, after due notice, suspending the member, member organization, participant or participant organization or employee thereof until payment of the entire outstanding account balance is made in full to the Exchange of such member's or member organization's entire outstanding account balance of all dues, fees, fines, or other charges imposed by the Exchange. *If all amounts due and owing to the Exchange, Stock Clearing Corporation of Philadelphia (''SCCP'') and other member firms of the Exchange with respect to an equity trading permit (''ETP'') are not paid to the Exchange, SCCP or to the relevant member firm of the Exchange, as the case may be, within 14 days following suspension of the ETP, the Board of Governors or its designee may terminate the ETP.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend paragraph (i) of Exchange Rule 23, *Equity Trading Permits,* and to amend Exchange Rule 50, *Late Charge,* in order to make changes to conform to the Exchange's current business plan respecting ETPs.[4]

Exchange Rule 23(i)

Exchange Rule 23(i) requires ETP organizations to provide security for the payment of certain claims owed by ETP holders upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were proceeds from the transfer of a membership. The security is in the amount of $50,000 and may take the form of a letter of credit, a guaranty by an acceptable financial institution, or a cash deposit. Exchange Rule 23(i)(i)(A) and (B) provide that the proceeds of the cash deposit or letter of credit shall be applied in the same manner as proceeds of membership transfers under Exchange By-Law 15–3. Likewise, Exchange Rule 23(i)(i)(C) provides that the guaranty must be made by a financial institution acceptable to the Exchange and must guaranty payment by the ETP organization of any claims listed in Exchange By-Law 15–3 up to $50,000.[5] The security requirement of Exchange Rule 23(i) does not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations or ETP organizations for the previous year.[6]

The Exchange states that the proposed amendment to Exchange Rule 23(i)(i) would narrow the applicability of the security requirement. ETP organizations, which are also member organizations holding equitable title to a membership (as opposed to conducting Exchange business solely with ETPs), legal title to which is held by an associated person of such member organization, would not be required to provide the security. Additionally, proposed subsection (i)(iv) of Exchange Rule 23 would provide that the proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, SCCP or other member firms of the Exchange as described in Exchange By-Law 15–3 against the member organization's ETP holders.

Finally, the Exchange proposes to make a clarifying change to the first sentence of subparagraph (i) of Exchange Rule 23(i) so as to conform that sentence to sections (A), (B) and (C) of Exchange Rule 23(i)(i). Specifically, the proposed amendments to the first sentence of Exchange Rule 23(i) would clarify that the security is intended to cover payment of any claims owed to SCCP and to other member firms of the Exchange, in addition to payment of any claims owed to the Exchange itself.

Exchange Rule 50

The purpose of the proposed amendment to Exchange Rule 50 is to allow the Board of Governors or its designee to terminate an ETP 14 days after the ETP holder is suspended. Pursuant to Exchange Rule 23(a), the Exchange has authority to issue up to 75 ETPs outstanding from time to time. Exchange Rule 23(h) provides that an ETP holder may be suspended or expelled on the same basis as a member. The Exchange believes that it is necessary for it to have the ability to terminate an ETP that has been suspended, so that the Exchange may re-issue the ETP to another applicant. The Exchange believes that this is particularly important because the Exchange is limited to having only 75 ETPs outstanding from time to time pursuant to Exchange Rule 23(a). According to the Exchange, this proposed amendment to Exchange Rule 50 is intended to provide for this termination right.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

[4] Exchange Rule 23, which provides for ETPs, was approved by the Commission on January 9, 2002. *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR–Phlx–00–02 and SR–Phlx–00–03).

[5] Exchange By-Law 15–3, *Disposition of Proceeds of Sale of Membership,* provides that upon certain transfers of a membership, the proceeds thereof shall be applied to certain amounts owed to the Exchange, to SCCP or Options Clearing Corporation, and to other members or member firms of the Exchange.

[6] For purposes of Rule 23(i)(iii), a member organization, participant organization or ETP organization will be considered to have been in good standing for the past year if (1) it has been a member organization, participant organization or ETP organization for the past year; (2) it is not currently suspended and has not been suspended at any time during the previous year; and (3) it is not currently in arrears respecting Exchange dues, fees, charges, fines or other monies due and owed to the Exchange, has not been delinquent in the payment of any such amounts more than three times in the past year, and has not been more than 30 days in arrears with respect to such amounts at any time during the past year. Telephone conversation between Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, Florence Harmon, Senior Special Counsel, Division, Commission and Christopher Solgan, Law Clerk, Division, Commission on May 24, 2002.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers for the reasons set forth below.

Specifically, the Exchange believes that the proposed elimination of the security requirement for certain member organizations under Exchange Rule 23(i)(i) should enhance the attractiveness of ETPs to those organizations. The language proposed to be added to Exchange Rule 23(i) in proposed subsection (iv) would provide, with respect to such member organizations, that the proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, SCCP or other member firms of the Exchange as described in Exchange By-Law 15–3 against the member organization's ETP holders. In view of the availability of membership proceeds, the Exchange believes that it is fair and appropriate not to require such member organizations to provide the same security under Exchange Rule 23(i) as required by ETP organizations without a membership subject to Exchange By-Law 15–3.

In addition, the Exchange believes that the proposed amendment to Exchange Rule 50 to enable the Exchange to terminate an ETP 14 days following suspension, and thus allowing it to reissue the ETP to another applicant who may use it to trade would enhance liquidity on the Exchange. By permitting the Exchange to terminate ETPs 14 days following suspension, the Exchange believes that this amendment should enable it to offer more competitive markets than would be possible if ETPs were permitted to remain in a state of suspension, without trading activity, for a lengthier period of time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11] Lastly, the Commission notes that the Exchange has requested that the Commission waive the 30-day operative date.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–13 and should be submitted by June 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14140 Filed 6–5–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on April 2, 2002, the date the Exchange filed Amendment No. 2.

[12] *See* Amendment No. 1, *supra* note 3. Because the Commission staff sought clarifications, which the Phlx gave on May 24, 2002, *see supra* note 6, the Commission notes that it has been more that 30 days from when the Exchange submitted this filing and its publication in the **Federal Register**. Thus, the 30-day operative date has passed.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4033]

Culturally Significant Objects Imported for Exhibition Determinations: ''Connecting Museums''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Connecting Museums,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, New York, from on or about June 15, 2002, to on or about November 10, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 30, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–14206 Filed 6–5–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 24, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12355.

Date Filed: May 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 11, 2002.

Description: Application of AeroSvit Airlines, pursuant to 49 U.S.C. 41302, Part 211, and Subpart B, requesting a foreign air carrier permit to engage in scheduled and Charter combination service between Ukraine and the United States.

Docket Number: OST–2002–12358.

Date Filed: May 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 11, 2002.

Description: Application of M & N Aviation, Inc., pursuant to 49 U.S.C. 41738 and Subpart B, requesting authority to engage in scheduled passenger service as a commuter air carrier.

Docket Number: OST–2002–12370.

Date Filed: May 22, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 12, 2002.

Description: Application of Air Japan Co., Ltd. (AJX), pursuant to 49 U.S.C. 41301, *et seq.*, 14 CFR part 211, and subpart B, requesting a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between any point or points in Japan and any point or points in the United States and charter authority, consistent with AJX's exiting exemption authority.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–14224 Filed 6–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2002–11996]

Draft Report Implementing OMB's Information Dissemination Quality Guidelines

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of public comment period.

SUMMARY: On January 3, 2002, the Office of Management and Budget (OMB) issued Government-wide guidelines under Section 515 that direct each Federal agency to establish and implement written procedures to ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate. On April 24, 2002, the Department of Transportation (DOT) posted its proposed Departmental guidelines to implement Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (PL 106–554) on its Web site for public comments. On April 30, 2002, the Department published a notice of availability of its draft guidelines in the **Federal Register**. Today's notice extends the public comment period for this proposal.

DATES: Comments should be submitted by June 17, 2002.

ADDRESSES: You may file comments using the Internet by logging in on DOT'S Dockets Management System (DMS) Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment and for reviewing all comments on line. Once received, a notification receipt will be forwarded to you. You may fax your comments to the DMS at (202) 493–2251. You may also submit your comments by mail or in person by sending your comments to the U. S. Department of Transportation (DOT), Office of Dockets and Media Management to the Docket Clerk, Docket No. OST–2002–11996, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. If you would like the Department to acknowledge receipt of your written comments, you must include a self-addressed stamped postcard on which the following statement is made: ''Comments on Docket OST–2002–11996.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Comments should identify the docket number. Written comments should be submitted in duplicate. The Office of Dockets and Media Management is open for examination and copying at the above address from 9:00 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All comments received will be available for inspection at the above address. Please note that due to current mail security procedures affecting U.S. Postal Service delivery to Government offices, commenters may find it advantageous to use an alternative method (the internet, fax, or professional delivery service) to submit comments to the Docket and ensure their timely receipt at the U.S. Department of Transportation.

FOR FURTHER INFORMATION CONTACT: Vanester M. Williams, Office of the Chief Information Officer, U. S. Department of Transportation; 202–366–1771 (not a toll-free call) or by e-mail at *vanester.Williams@ost.dot.gov.* For specific inquiries on the Department's administrative mechanisms for allowing persons to seek correction of information, please contact Robert Ashby, Office of the General Counsel, U. S. Department of Transportation; 202–366–9310 (not a toll-free call) or by e-mail at *bob.ashby@ost.dot.gov.* For specific inquiries on the Department's statistical guidelines, please contact Dr. Patrick Flanagan, Bureau of Transportation Statistics, U. S. Department of Transportation; 202–366–4168 (not a toll-free call) or by e-mail at *pat.flanagan@bts.dot.gov.*

SUPPLEMENTARY INFORMATION: The Department's information quality guidelines will apply to a wide variety of its information dissemination activities in order to meet basic information quality standards set forth by Section 515. The purpose of these guidelines is to provide a framework under which the Department will allow affected persons an opportunity to seek and obtain correction of information maintained and disseminated by the Department that does not comply with these guidelines.

The Department received a request from a commenter to extend the comment period for this proposal an additional 60 days, through the end of July. In order to meet the August 1, 2002 deadline for submission of draft final

guidelines to OMB, as well as the October 1, 2002 deadline for issuance of final guidelines to OMB, the Department will not be able to extend the comment period for the requested length of time. However, in order to provide the public some additional time to review and send comments to us, the Department will extend the comment period for an additional two weeks. The closing date for the extended comment period will be June 17, 2002.

Instructions for filing comments may also be found in the guidelines document posted on the Department's DMS Web site. The Department will review all comments submitted in response to its draft guidelines. The comments will be available for public review on the DMS Web site.

Issued in Washington, DC, on May 30, 2002.

Eugene K. Taylor, Jr.,

Deputy CIO, Department of Transportation.

[FR Doc. 02–14225 Filed 6–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34068]

Twin Cities & Western Railroad Company, Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch—Continuance in Control Exemption—Minnesota Prairie Line, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25, for Twin Cities & Western Railroad Company, a Class III rail common carrier, and Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch, all noncarrier individuals (collectively Petitioners) to continue in control of Minnesota Prairie Line, Inc.

DATES: This exemption will be effective July 6, 2002. Petitions to stay must be filed by June 21, 2002, and petitions to reopen must be filed by July 1, 2002.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 34068 to: Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioners' representative: Jo A. DeRoche, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW Fifth Floor, Washington, DC 20036–1609.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, 1925 K Street, NW., Suite 405, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD Services 1–800–877–8339.]

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: May 30, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–14213 Filed 6–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 614X)]

CSX Transportation, Inc.—Abandonment Exemption—in Richmond County, GA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.60 miles of railroad from Valuation Station 0+00 at milepost ANS 0.2 to Valuation Station 84+44, in Augusta, Richmond County, GA. The line traverses United States Postal Service Zip Code 30901.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on July 6, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 17, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 11, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which, as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

granted and fully abandoned the line. If consumption has not been effected by CSXT's filing of a notice of consumption by June 6, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: May 31, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–14214 Filed 6–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Expansion of National Customs Automation Program Test of Semi-Monthly Statement Processing to Additional Ports of Entry

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to expand for current participants the testing of the semi-monthly filing and statement processing program (semi-monthly processing) to seven additional ports of entry, and invites those participants to file their statements at these additional ports. The expansion of this National Customs Automation Program test to the additional ports will enable Customs to more fully evaluate the national effect of this program for its final integration into the Automated Commercial Environment. The test is not being opened for new participants.

For the convenience of participants in this program test, this notice lists all the ports of entry—both existing and the additions—where participants may file their entry summaries and make payment of duties, taxes, and fees owed.

EFFECTIVE DATES: Current participants will be able to file semi-monthly statements at the additional ports of entry July 8, 2002; however, participants will need to notify the Entry Branch Supervisor at each additional port of entry to arrange for an exact start date and to receive any additional instructions. Evaluations of the semi-monthly processing at all the ports identified will continue to be conducted periodically.

FOR INFORMATION CONTACT: For inquiries regarding the ports of entry added to the semi-monthly processing prototype contact Debbie Scott, Entry and Drawback Management Team, (202) 927–1962.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Pursuant to these provisions, Customs is developing a new commercial processing system, the Automated Commercial Environment (ACE). The ACE is being designed to support the new Trade Compliance processes. One of the main features of the ACE will be the periodic summary filing and periodic statements function, which will enable each account to pay duties, taxes, fees, and other payments owed using a periodic statement cycle. Periodic summary filing and statement functional capabilities eventually will be fully integrated into the new ACE system. Semi-monthly processing using the current Automated Commercial System (ACS) will eventually cease as the ACE system is deployed nationwide.

For programs designed to evaluate existing and planned components of the National Customs Automation Program (NCAP), § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) implements the NCAP testing procedures. As the periodic summary filing and periodic statements function (semi-monthly filing and statement processing prototype) concerns an existing component of the NCAP relating to the electronic payment of duties, fees, and taxes, the semi-monthly processing test was established pursuant to that regulation. See, the **Federal Register** Notice published March 30, 1998 (63 FR 15259) for a fuller explanation of this test.

When initially established in 1998, the semi-monthly filing and statement processing prototype (semi-monthly processing) was implemented at only 14 ports of entry and it was stated in the **Federal Register** Notice that the testing of this prototype would be implemented over an 18-month period and would end when the periodic payment/statement feature of ACE is available. To date, the ACE is not fully implemented, and the testing of the semi-monthly processing prototype is incomplete. The reasons for these developments are many: the continuing reorganization of Customs, budgeting difficulties, the occurrence of other national events, which has occasioned a shifting of Customs priorities, etc. Regarding the locations where semi-monthly processing are currently authorized to be filed, evaluations of the prototype conducted to date with participants show a concern that the prototype testing should be expanded to additional ports, so that the national effect of this program can be fully gauged. Accordingly, Customs is announcing in this document that seven new ports of entry will be authorized so that current participants may file their entry summaries and make payment of duties, taxes, and fees owed. The seven new ports of entry are located at: Dallas, Texas; Houston, Texas; Indianapolis, Indiana; Jacksonville, Florida; Memphis, Tennessee; Norfolk, Virginia; and Savannah, Georgia.

Current participants will be able to file semi-monthly statements at any of these additional ports 30 days after this Notice is published in the **Federal Register**. However, participants will need to notify the Entry Branch Supervisor at each additional port of entry to arrange for an exact start date and to receive any additional instructions. It is noted that the test is not being opened for new participants. Evaluations of the semi-monthly processing at all the ports identified will continue to be conducted periodically.

For the convenience of participants in this program test, this notice summarily lists, alphabetically by State, all the ports of entry—both existing and the additions—eligible for the semi-monthly processing prototype:

In California, the ports at Los Angeles-Long Beach and San Francisco-Oakland;

In Florida, the ports at Jacksonville and Miami;

In Georgia, the ports at Atlanta and Savannah;

In Illinois, the port at Chicago;

In Indiana, the port at Indianapolis;

In Michigan, the ports at Detroit and Port Huron;

In New York, the ports at Buffalo-Niagara Falls and New York;

In Ohio, the port at Cleveland;

In South Carolina, the port at Charleston;

In Tennessee, the port at Memphis;

In Texas, the ports at Dallas-Fort Worth, El Paso, Houston-Galveston, and Laredo;

In Virginia, the port at Norfolk-Newport News; and

In Washington, the port at Puget Sound.

Customs requests that participants be active in the evaluation of the semi-monthly test.

Dated: May 31, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–14220 Filed 6–5–02; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday—June 20, 2002 (10 a.m.–5 p.m.) Friday—June 21, 2002 (9:30 a.m.–4 p.m.).

LOCATION: National Defense University, National War College, Bldg. 61, Roosevelt Hall, Hill Conference Room, Ft. McNair, 300 5th Avenue, Washington, DC.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: June 2002 Board Meeting; Approval of Minutes of the One Hundred Fourth Meeting (March 21, 2002) of the Board of Directors; Chairman's Report; President's Report; Review, Discussion and Approval of Solicited Topics for Grants; Discussion of Education Program—Consideration of a Master's Level Degree Granting Program; Fellows Report; Selection of National Peace Essay Contest Winners; Committee Reports; Discussion of the Special Initiative on the Muslim World; Review Plans for Research and Studies Program; Other General Issues.

CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: May 31, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–14293 Filed 6–3–02; 4:50 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0006'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: May 23, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14093 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comment on information needed to determine the correct rate of subsistence allowance payable to a trainee in an established, approved on-the-job training or apprenticeship program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to

''OMB Control No. 2900–0368'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Statement of Wages Paid to Trainee VA (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1917 is used by employers providing on-job or apprenticeship training to veterans to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and to ensure the veteran is receiving the correct rate of subsistence allowance.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: May 25, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–14094 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the insured's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0119'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from hospitals to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: May 20, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14095 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail:

denise.mclamb@mail.va.gov. Please refer to ''OMB Control No. 2900–0131.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0131'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used by the policyholder to apply for new issue, reinstatement or change of plan on Government Life Insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 22, 2002, at page 13414.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: May 22, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14096 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0024.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0024'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by insureds to authorize VA to make deductions from benefits payments to pay premiums, loans and/or liens on his or her insurance contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2002, at pages 12647–12648.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: May 22, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–14097 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on June 25, 2002, at the American Legion Building, 1608 K Street, NW., Washington, DC. The meeting will convene at 7:30 a.m. and adjourn at 3:30 p.m. The meeting will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theatre of operations during the Persian Gulf War.

The meeting will begin with a presentation of the Committee's interim report and will be followed by a discussion on research studies. Throughout the day, Committee members will present and discuss key scientific research and research recommendation proposals affecting Gulf War veterans. The meeting will include opportunities to discuss the materials presented during the day.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Committee Manager, at Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing further information should contact Ms. O'Shea at (202) 273–5031.

Dated: May 29, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–14099 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Tuscaloosa, AL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Department of Veterans Affairs Medical Center, Tuscaloosa, for

an enhanced-use leasing development. The Department intends to enter into a long-term lease of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage a hospice facility, all at not cost to VA.

FOR FURTHER INFORMATION CONTACT: Jacob Gallun, Office of Asset Enterprise Management (004B2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: May 30, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–14098 Filed 6–5–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 67, No. 109
Thursday, June 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Power Rates

Correction

In notice document 02–12683 beginning on page 35802 in the issue of Tuesday, May 21, 2002 make the following correction:

On page 35804, the table is corrected to read as set forth below.

	Existing rates	Proposed rates
GENERATION RATES	Rate Schedule P–98D (System Peaking)	Rate Schedule P–02 (System Peaking)
Capacity:		
Grid or 138–161kV	$2.56/kW/Mo + up to $0.0146/kW/Mo (ancillary services) for generation within control area: Regulation Ancillary Services + $0.04/kW/Mo for deliveries within control area	$2.72/kW/Mo + up to $0.0112/kW/Mo (ancillary services) for generation within control area: Regulation Ancillary Services + $0.06/kW/Mo for deliveries within control area
69 kV	Transformation Service + $0.25/kW/Mo (applied to usage, not reservation)	Transformation Service + $0.28/kW/Mo (applied to usage, not reservation)
Energy	$0.0048/kWh of Peaking Energy and Supplemental Peaking Energy + a Purchased Power Adder of $0.0011 of Peaking Energy (± 0.0011 annually at Administrator's discretion).	$0.0050/kWh ofr Peaking Energy and Supplemental Peaking Energy + a Purchase Power Adder or $0.0025 of Peaking Energy (± 0.0011 annually at Administrator's discretion).
TRANSMISSION RATES	Rate Schedule NFTS–98D (Transmission)	Rate Schedule NFTS–02 (Transmission)
Capacity (Firm Reservation with energy).		
Grid of 138–161 kV.	$0.69/W/Mo $0.173/kW/Week $0.0314/kW/Day + Required Ancillary Services: $0.06/kw/Mo, or $0.016/kW/Week, or $0.0028/kW/Day + Reserve Ancillary Services: up to: $0.00146/kW/Mo, or $0.00366/kW/Week, or $0.00066kW/Day, for generation in control area + Regulation & Freq Response Ancillary Service up to: $0.04/kW/Mo, or $0.010/kW/Week, or $0.0018/kW/Day, for deliveries within control area	$0.73/kW/Mo $0.183/kW/Week $0.0332/kW/Day + Required Ancillary Services: $0.08/kW/Mo, or $0.021/kW/Week, or $0.0037/kW/Day + Reserve Ancillary Services: up to: $0.00112/kW/Mo, or $0.0028/kW/Week, or $0.00050/kW/Day, for generation in control area + Regulation & Freq Response Ancillary Service up to: $0.06/kW/Mo, or $0.015/kW/Week, or $0.0027/kW/Day, for deliveries within control area
69 kV and below	Transformation Service + $0.25/kW/Mo no separate charge (applied on usage, not reservation). Weekly and daily rates not applied	Transformation Service + $0.28/KW/Mo no separate charge (applied on usage, not reservation). Weekly and daily rates not applied.
Capacity (Non-firm with energy):	no separate capacity charge $0.55/kW/Mo, or $0.138/kW/Week, or $0.0251/kW/Day, or $0.00157/kWh, delivered	no separate capacity charge 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate and divided by 352 for hourly rate. ROW≤

	Existing rates	Proposed rates
TRANSMISSION RATES	Rate Schedule NFTS–98D (Transmission)	Rate Schedule NFTS–02 (Transmission)
Network Service	$0.72/kW/Mo of Network Load + Required Ancillary Services: $0.06/kW/Mo, or + Reserve Ancillary Services: up to: $0.00146/kW/Mo, for generation in control area + Regulation & Freq Response	$0.73/kW/Mo of Network Load + Required Ancillary Services: $0.08/kW/Mo, or + Reserve Ancillary Services: up to: $0.00112/kW/Mo, for generation in control area +
	Rate Schedule EE–98 (Excess Energy)	Rate Schedule EE–02 (Excess Energy)
Energy	$0.0048/Wh + $0.0018/kWh (transmission) + Required ancillary services $0.00018/kWh + $0.00018/kWh (anciullary service) for generation in control area + $0.00011/kWh (ancillary service) + for deliveries in control area:	$0.0050/kWh + $0.0021/kWh (transmission) + Required ancillary services $0.00023/kWh + $0.00004/kWh (ancillary service) for generation in control area + .000017/kWh (ancillary service) + for deliveries in control area:

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Federal Register

Thursday,
June 6, 2002

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 17 and 226

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI23

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0202522126–2126–01; I.D. 052002A]

RIN 0648–AQ03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon

AGENCY: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively ''the Services,'' propose to designate critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a threatened species listed under the Endangered Species Act of 1973, as amended (Act). We propose 14 geographic areas among the Gulf of Mexico rivers and tributaries as critical habitat for the Gulf sturgeon. These 14 geographic areas (units) encompass approximately 2,544 river kilometers (rkm) (1,580 river miles (rmi)) and 6,042 square kilometers (km^2) (2,333 square miles (mi^2)) of estuarine and marine habitat.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any particular area as critical habitat. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation.

DATES: *Comments:* We will accept comments until September 23, 2002.

Public Hearings: We have scheduled four public hearings for this proposal. We will hold public informational meetings prior to each public hearing at the hearing location. The public information sessions will start at 5:00 p.m. and end at 6:30 p.m.. The formal public hearings will start at 7:00 p.m. and end at 9:00 p.m. on the dates indicated:

(1) August 19, 2002, Live Oak, FL
(2) August 20, 2002, Defuniak Springs, FL
(3) August 21, 2002, Biloxi, MS
(4) August 22, 2002, Kenner, LA

All comments received during the comment period, both written and presented at public hearings, will receive equal consideration.

ADDRESSES: *Comments:* If you wish to comment, you may submit your comments by any one of several methods:

(1) You may submit written comments and information to the Panama City Field Office, addressed to Patty Kelly, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405.

(2) You may hand-deliver written comments to the Panama City Field Office, at the above address, or fax your comments to 850/763–2177.

(3) You may send comments by electronic mail (e-mail) to *gulfsturgeon@fws.gov.* For directions on electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

Public Hearings

(1) Suwannee River Water Management District, 9225 C.R. 49, Live Oak, FL 32060.

(2) City of Defuniak Springs, 71 U.S. Highway 90 West, Chautauqua Building, Museum Room, Defuniak Springs, FL 32433.

(3) J.L. Scott Marine Ed Center, 115 Beach Boulevard, Biloxi, MS 39530.

(4) Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.

FOR FURTHER INFORMATION CONTACT: Patty Kelly, FWS, at the above address (telephone 850/769–0552, extension 228; facsimile 850/763–2177) with questions concerning units 1 to 7; or Stephania Bolden, NMFS, at 9721 Executive Center Drive North, St. Petersburg, FL 33702–2449, (telephone 727/570–5312; facsimile 727/570–5517) with questions concerning units 8 to 14.

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrinchus* (=*oxyrhynchus*) *desotoi*), also known as the Gulf of Mexico sturgeon, is an anadromous fish (ascending rivers from the sea for breeding), inhabiting coastal rivers from Louisiana to Florida during the warmer months and overwintering in estuaries, bays, and the Gulf of Mexico. It is a nearly cylindrical primitive fish embedded with bony plates or scutes. The snout is greatly extended with four barbels in front of the mouth and the suction type mouth is located beneath the head. The upper lobe of the tail is longer than the lower lobe. Adults range from 1.8 to 2.4 meters (m) (6 to 8 feet (ft)) in length, with adult females larger than males. The Gulf sturgeon is distinguished from the geographically disjunct Atlantic coast subspecies (*A. o. oxyrinchus*) by its longer head, pectoral fins, and spleen (Vladykov 1955, Wooley 1985).

Distribution and Status

Historically, the Gulf sturgeon occurred from the Mississippi River to Tampa Bay. Its present range extends from Lake Pontchartrain and the Pearl River system in Louisiana and Mississippi east to the Suwannee River in Florida. Sporadic occurrences have been recorded as far west as the Rio Grande River between Texas and Mexico, and as far east and south as Florida Bay (Wooley and Crateau 1985, Reynolds 1993).

In the late 19th century and early 20th century, the Gulf sturgeon supported an important commercial fishery, providing eggs for caviar, flesh for smoked fish, and swim bladders for isinglass, a gelatin used in food products and glues (Carr 1983). Gulf sturgeon numbers declined due to overfishing throughout most of the 20th century. The decline was exacerbated by habitat loss associated with the construction of water control structures, such as dams and sills, mostly after 1950. In several rivers throughout its range, dams have severely restricted sturgeon access to historic migration routes and spawning areas (Boschung 1976, Wooley and Crateau 1985, McDowell 1988).

On September 30, 1991, we listed the Gulf sturgeon as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) (56 FR 49653). Other threats and potential threats identified in the listing

rule included modifications to habitat associated with dredged material disposal, de-snagging, and other navigation maintenance activities; incidental take by commercial fishermen; poor water quality associated with contamination by pesticides, heavy metals, and industrial contaminants; aquaculture and incidental or accidental introductions; and the Gulf sturgeon's slow growth and late maturation. The Gulf sturgeon listing rule and the Gulf Sturgeon Recovery/Management Plan (FWS *et al.* 1995), which was approved by the Services and the Gulf States Marine Fisheries Commission, provide a more detailed discussion of the reasons for the species' decline and threats to surviving populations.

The Gulf Sturgeon Recovery/Management Plan (FWS *et al.* 1995) recommended that genetic studies be done to determine geographically distinct management units. Some work in this regard has been completed (Waldman and Wirgin 1998), but we have not formally adopted management units at this time. For purposes of this proposed rule, we have used the term subpopulation to subdivide the Gulf sturgeon population based on geography, degree of connectedness, and genetic interchange (Lande and Barrowclough 1987). Seven subpopulations are described below.

Feeding Habits

Gulf sturgeon feeding habits in freshwater vary depending on the fish's life history stage (*i.e.*, young-of-year, juvenile, subadult, adult). Young-of-year Gulf sturgeon remain in freshwater through early February feeding on aquatic invertebrates and detritus (Mason and Clugston 1993, Sulak and Clugston 1999). Juvenile feeding is believed to be widely distributed, exploiting scarce food resources throughout the river, including aquatic insects (*e.g.*, mayflies and caddisflies), worms (oligochaetes), and bivalve molluscs (Huff 1975, Mason and Clugston 1993). Mason and Clugston (1993) found that subadult and adult Gulf sturgeon collected during June and October do not feed in fresh water.

Many reports indicate that adult and subadult Gulf sturgeon fast and lose up to 30 percent of their total body weight while in fresh water, and then compensate the loss during winter feeding in the sea (Carr 1983, Wooley and Crateau 1985, Clugston *et al.* 1995, Morrow *et al.* 1998a, Heise *et al.* 1999a, Sulak and Clugston 1999, Ross *et al.* 2000). Gu *et al.* (2001) tested the hypothesis that Gulf sturgeon do not feed significantly during their annual residence in fresh waters by comparing stable carbon isotope ratios of tissue samples from subadult and adult Suwannee River Gulf sturgeon and their potential fresh water and marine food sources. A large difference in isotope ratios between fresh water food sources and fish muscle tissue suggests that Gulf sturgeon do not feed significantly in fresh waters. The isotope similarity between Gulf sturgeon and marine food resources strongly indicates that this species relies almost entirely on the marine food web for its growth (Gu *et al.* 2001).

Once Gulf sturgeon leave the river, having spent at least 6 months in the river fasting, we presume that they immediately begin feeding. Upon exiting the rivers, Gulf sturgeon are found in high concentrations near their natal river mouths. Lakes and bays at the mouths of the river systems where Gulf sturgeon occur are important because they offer the first opportunity for Gulf sturgeon exiting their natal rivers to forage. Gulf sturgeon rely almost entirely on estuarine and marine food for their growth (Gu *et al.* 2001). Gulf sturgeon must be able to consume sufficient quantities of prey while in estuarine and marine waters to regain the weight they lose while in the river system and to maintain positive growth on a yearly basis. In addition, reproductive Gulf sturgeon require additional food resources to obtain sufficient energy necessary for reproduction (Fox *et al.* in press, Murie and Parkyn pers. comm. 2002).

Adult and subadult Gulf sturgeon, during marine and estuarine periods, are thought to forage opportunistically (Huff 1975), primarily on benthic (bottom dwelling) invertebrates. Gut content analyses have indicated that the Gulf sturgeon's diet is predominated by amphipods, lancelets, polychaetes, gastropods, shrimp, isopods, molluscs, and crustaceans (Huff 1975, Mason and Clugston 1993, Carr *et al.* 1996b, Fox *et al.* 2000, Fox *et al.* in press). Gulf sturgeon from the Suwannee River subpopulation are known to forage on brachiopods (D. Murie and D. Parkyn, University of Florida (UF), pers. comm. 2002); however this is not a documented prey of other subpopulations. Ghost shrimp (*Lepidophthalmus louisianensis*) and the haustoriid amphipod (*Lepidactylus* sp.) are strongly suspected to be the most important prey for adult Gulf sturgeon over 20 kilograms (kg) (44 pounds (lb)) (Heard *et al.* 2000, Fox *et al.* in press). This hypothesis is based on the following evidence—(1) Gulf sturgeon have been consistently located and observed actively feeding in areas where numerous burrows similar to those occupied by ghost shrimp exist (Fox *et al.* 2000) and with high densities of both ghost shrimp and haustoriid amphipods (Heard *et al.* 2000), (2) the digestive tracts of two adult Gulf sturgeon that died during netting operations contained numerous ghost shrimp (Fox *et al.* 2000), (3) stomach contents of a 30 kg (67 lb) sturgeon taken in the upper portion of Choctawhatchee Bay contained more than 100 individual haustoriid amphipods and 67 ghost shrimp (Heard *et al.* 2000), and (4) one-third of 157 sturgeon guts analyzed by Carr *et al.* (1996b) contained exclusively brachipods and ghost shrimp.

Reproduction

Gulf sturgeon are long-lived, with some individuals reaching at least 42 years in age (Huff 1975). Age at sexual maturity for females ranges from 8 to 17 years, and for males from 7 to 21 years (Huff 1975). Gulf sturgeon eggs are demersal (they are heavy and sink to the bottom), adhesive, and vary in color from gray to brown to black (Vladykov 1963, Huff 1975, Parauka *et al.* 1991). Chapman *et al.* (1993) estimated that mature female Gulf sturgeon produce an average of 400,000 eggs. Habitat at egg collection sites consist of limestone bluffs and outcroppings, cobble, limestone bedrock covered with gravel and small cobble, gravel, and sand (Marchant and Shutters 1996, Sulak and Clugston 1999, Fox *et al.* 2000). A dense matrix of gravel or cobble is probably essential for Gulf sturgeon egg adhesion and the sheltering of the yolk sac larvae, and is a habitat the adults apparently select (Sulak and Clugston 1999). Other substrates identified as possible spawning habitat include marl (clay with substantial calcium carbonate), soapstone, or hard clay (W. Slack, Mississippi Museum of Natural Science, pers. comm. 2002; F. Parauka, FWS, pers. comm. 2002). Water depths at egg collection sites ranged from 1.4 to 7.9 m (4.6 to 26 ft), with temperatures ranging from 18.3 to 22.0 degrees Celsius (°C) (64.9 to 71.6 degrees Fahrenheit (°F)) (Fox *et al.* 2000). Laboratory experiments indicated optimal water temperature for survival of Gulf sturgeon larvae is between 15 and 20°C (59 and 68°F), with low tolerance to temperatures above 25°C (77°F) (Chapman and Carr 1995).

Sulak and Clugston (1999) suggested that sturgeon spawning activity in the Suwannee River is related to the lunar phase of the moon, but only after the water temperature has risen to 17°C (62.6°F). Fox *et al.* (in press) however, found little evidence of spawning associated with lunar cycles within the Choctawhatchee River system.

Spawning in the Suwannee River occurs during the general period of spring high water, when ionic conductivity and calcium ion concentration are most favorable for egg development and adhesion (Sulak and Clugston 1999). Fox *et al.* (in press) found no clear pattern between timing of river entrance and flow patterns on the Choctawhatchee River.

Atlantic sturgeon (*A. oxyrhynchus*) exhibit a long inter-spawning period, with females spawning at intervals ranging from every 3 to 5 years, and males every 1 to 5 years (Smith 1985). It is believed that Gulf sturgeon exhibit similar behavior, as male Gulf sturgeon are capable of annual spawning, and females require more than one year between spawning events (Huff 1975, Fox *et al.* 2000).

Fresh Water Habitat

In the spring (March to May), adult and subadult Gulf sturgeon return to their natal river, where sexually mature sturgeon spawn, and the population spends until October or November (6 to 8 months) in fresh water rivers (Odenkirk 1989, Foster 1993, Clugston *et al.* 1995, Fox *et al.* 2000). During their early life history stages, sturgeon require bedrock and clean gravel or cobble substrate for eggs to adhere to and for shelter for developing larvae (Sulak and Clugston 1998). Young-of-year appear to disperse widely, using extensive portions of the river as nursery habitat. They are typically found on sandbars and sand shoals over rippled bottom and in shallow, relatively open, unstructured areas. This dispersion may be an adaptation to maximize scarce food resources (Randall and Sulak 1999). Clugston *et al.* (1995) reported that young Gulf sturgeon in the Suwannee River, weighing between 0.3 and 2.4 kg (0.7 and 5.3 lb), remain in the vicinity of the river mouth and estuary during the winter and spring.

Adult Gulf sturgeon spawn in upper river reaches. On some river systems such as the Pascagoula River and Apalachicola River, adult and subadult Gulf sturgeon remain near the spawning grounds throughout the summer months (Wooley and Crateau 1985, Ross *et al.* 2001b). However, in other rivers Gulf sturgeon spawn and move downstream to areas referred to as summer resting or holding areas. Adults and subadults are not distributed uniformly throughout the river, but show a preference for these discrete areas usually located in lower and middle river reaches (Potak *et al.* 1995). Often, these resting areas are located in close proximity to springs throughout the warmest months of the year, but not located within a spring or thermal plume emanating from a spring (Clugston *et al.* 1995, Potak *et al.* 1995, Foster and Clugston 1997). These resting areas are also often located in deep holes or shallow areas along straightaways ranging from 2 to 19 m (6.6 to 62.3 ft) deep (Wooley and Crateau 1985, Morrow *et al.* 1998a, Ross et al. 2001a and b, Craft *et al.* 2001, Hightower *et al.* in press). The substrates consisted of mixtures of limerock and sand (Clugston *et al.* 1995), sand and gravel (Wooley and Crateau 1985, Morrow *et al.* 1998a), or just sandy substrate (Hightower *et al.* in press).

River flow may serve as an environmental cue that governs both sturgeon migration and spawning (Chapman and Carr 1995). If the flow rate is too high, sturgeon in several life-history stages can be adversely affected. Data describing the sturgeon's swimming ability in the Suwannee River strongly indicated that they cannot continually swim against prevailing currents of greater than 1 to 2 m per second (3.2 to 6.6 ft per second) (Wakeford 2001). If the flow is too strong, eggs might not be able to settle on and adhere to suitable substrate (Wakeford 2001). Flow velocity needs for age zero sturgeon may vary depending on substrate type. Chan *et al.* (1997) found that age zero Gulf sturgeon under laboratory conditions exposed to water velocities over 12 centimeters per second (cm/s) (4.7 inches per second (in/s)) preferred a cobble substrate, but favored water velocities under 12 cm/s (4.7 in/s) and then utilized a variety of substrates (sand, gravel, and cobble). Natural surface and groundwater discharges influence a river's characteristic fluctuations in volume, depth, and velocity (Leitman *et al.* 1993, Albertson and Torak 2002).

Gulf sturgeon require large areas of diverse habitat that have natural variations in water flow, velocity, temperature, and turbidity (FWS *et al.* 1995, Wakeford 2001). Change in temperature is one of the most important factors in initiating sturgeon migration (Wooley and Crateau 1985, Chapman and Carr 1995, Foster and Clugston 1997) (see the ''Migration'' section for temperature ranges). Laboratory experiments show that Gulf sturgeon eggs, embryos, and larvae have the highest survival rates when temperatures are between 15 and 20°C (59 and 68°F). Mortality rates of Gulf sturgeon gametes and embryos are highest when temperatures are 25°C (77°F) and above (Chapman and Carr 1995) (see ''Reproduction'' section for more detail). Researchers have documented temperature ranges at Gulf sturgeon resting areas between 15.3 and 33.7°C (59.5 and 92.7°F) with dissolved oxygen levels between 5.6 and 9.1 milligrams per liter (mg/l) (Morrow *et al.* 1998a, Hightower *et al.* in press).

In comparison to other fish species, sturgeon have a limited behavioral and physiological capacity to respond to hypoxia (insufficient oxygen levels) (Secor and Niklitschek 2001). Basal metabolism, growth, consumption, and survival are sensitive to changes in oxygen levels (Secor and Niklitschek 2001). Temperatures greater than 20°C (68°F) amplify the effect of hypoxia on sturgeon and other fishes (Coutant 1987). In laboratory experiments, young shortnose sturgeon (*A. brevirostrum*) (less than 77 days old) died at oxygen levels of 3.0 mg/l and all sturgeon died at oxygen levels of 2.0 mg/l (Jenkins *et al.* 1993). Data concerning the temperature, oxygen, and current velocity requirements of cultured sturgeon are being collected. Researchers plan to use this information to develop detailed information on water flow requirements of wild sturgeon throughout different phases of their fresh water residence (Wakeford 2001).

Estuarine and Marine Habitat

Subadult and adult Gulf sturgeon spend cool months (October or November through March or April) in estuarine areas, bays, or in the Gulf of Mexico (Odenkirk 1989, Foster 1993, Clugston *et al.* 1995). Studies of subadult Gulf sturgeon (ages 4 to 7) in Choctawhatchee Bay found that 78 percent of tagged fish remained in the bay the entire winter, while 13 percent ventured into a connecting bay. Possibly 9 percent spent some time in the Gulf of Mexico (FWS 1998). Adult Gulf sturgeon are more likely to overwinter in the Gulf of Mexico, with 40 percent of the tagged adults presumed to have left Choctawhatchee Bay and spent extended periods of time in the Gulf of Mexico (Fox and Hightower 1998a). In contrast, Gulf sturgeon from the Suwannee River subpopulation are known to migrate into the nearshore waters, where they remain for up to two months and then depart to unknown feeding locations in the open Gulf of Mexico (Carr *et al.* 1996b, Edwards *et al.* in prep.).

Subadult Gulf sturgeon show a preference for sandy shoreline habitats with water depths less than 3.5 m (11.5 ft) and salinities less than 6.3 parts per thousand (Parauka *et al.* in press). Fox and Hightower (1998a) found that adult Gulf sturgeon monitored in Choctawhatchee Bay use some of the same habitats as subadults. Some subadult Gulf sturgeon use seagrass

habitats in Choctawhatchee Bay. However, the majority of tagged fish have been located in areas lacking seagrass (Parauka *et al.* in press). Adult Gulf sturgeon also have not been frequently found in areas containing seagrass, which were concentrated in the western portion of the bay.

Craft *et al.* (2001) found that Gulf sturgeon in Pensacola Bay appear to prefer shallow shoals 1.5 to 2.1 m (5 to 7 ft) and deep holes near passes. Unvegetated, fine to medium-grain sand habitats, such as sandbars, and intertidal and subtidal energy zones resulting in sediment sorting and a preponderance of sand support a variety of potential prey items including estuarine crustaceans, small bivalve mollusks, and lancelets (Brim pers. comm. 2002, Menzel 1971, Abele 1986, American Fisheries Society 1989).

Habitats used by Gulf sturgeon in the vicinity of the Mississippi Sound barrier islands tend to have a sand substrate and an average depth of 1.9 to 5.9 m (6.2 to 19.4 ft). Preliminary data from bottom samples taken in these barrier island areas show that all samples contain lancelets (*Branchiostoma*). Since lancelets are a documented prey of Gulf sturgeon, it is likely that Gulf sturgeon are feeding along the sand substrate at barrier island passes (Ross *et al.* 2001a). Gulf nearshore (less than 1.6 km (1 mi)) unconsolidated, fine-medium grain sands, including natural inlets and passes from the Gulf to estuaries, support crustaceans such as mole crabs, sand fleas, various amphipod species, and lancelets (Brim pers. comm. 2002, Menzel 1971, Abele 1986, American Fisheries Society 1989).

Estuary and bay unvegetated ''mud'' habitats having a preponderance of natural silts and clays support burrowing and deep burrowing crustaceans, such as ghost shrimp, small crabs, also various polychaete worms, and small bivalve mollusks (Brim pers. comm. 2002, Menzel 1971, Abele 1986, American Fisheries Society 1989). Gulf sturgeon are found in these areas and since these are known food sources, it is assumed that Gulf sturgeon are also feeding in these areas.

Migration

Migratory behavior of the Gulf sturgeon varies by sex, maturity, water temperature, and river flow. Male Gulf sturgeon generally enter the rivers earlier in the spring and move greater distances than females; ripe (in reproductive condition) males and females enter the river earlier than nonripe fish (Fox *et al.* 2000). Adults and subadults begin moving from the estuaries, bays, and Gulf of Mexico into the coastal rivers in early spring (*i.e.*, March through May) when river water temperatures range from 16.0 to 23.°C (60.8 to 73.4°C) (Huff 1975, Carr 1983, Wooley and Crateau 1985, Odenkirk 1989, Clugston *et al.* 1995, Foster and Clugston 1997, Fox and Hightower 1998, Sulak and Clugston 1999, Fox *et al.* 2000). Some research supports the theory that spring migration coincides with the general period of spring high water (Sulak and Clugston 1999), while observations on other rivers systems do not support this theory (Fox *et al.* in press).

Fall downstream migration from fresh to saltwater begins in September (at about 23°C (73.4°F)) and continues through November (Huff 1975, Wooley and Crateau 1985, Foster and Clugston 1997). During the fall migration from fresh to saltwater, Gulf sturgeon may require a period of physiological acclimation to changing salinity levels, referred to as osmoregulation or staging (Wooley and Crateau 1985). This period may be short (Fox *et al.* in press) as sturgeon develop an active mechanism for osmoregulation and ionic balance by age one (Altinok 1997). On some river systems, timing of the fall migration appears to be associated with pulses of higher river discharge (Heise *et al.* 1999a and b, Ross *et al.* 2000 and 2001b, Parauka *et al.* in press).

Sturgeon ages 1 through 6 remain in the mouth of the Suwannee River over winter. In late January through early February, young-of-the-year Gulf sturgeon migrate down river for the first time (Sulak and Clugston 1999). Huff (1975) noted that juvenile Gulf sturgeon in the Suwannee River most likely participated in pre- and post-spawning migrations, along with the adults.

Findeis (1997) describes sturgeon (Acipenseridae) as exhibiting evolutionary traits adapted for benthic cruising. Tracking observations by Sulak and Clugston (1999), Edwards *et al.* (in prep.), and Fox *et al.* (in press) support that individual fish move over an area until they encounter suitable prey type and density, at which time they forage for extended periods of time. Individual fish often remained in localized areas (less than 1 km^2 (0.4 mi^2) for extended periods of time (greater than two weeks) and then moved rapidly to another area where localized movements occurred again (Fox *et al.* in press). It is unknown precisely how much benthic area is needed to sustain Gulf sturgeon health and growth, but because Gulf sturgeon have been known to travel long distances (greater than 161 km (100 mi)) during their winter feeding phase, significant resources must be necessary. These winter migrations are an important strategy for feeding and for occasional travel to non-natal rivers for possible spawning and genetic interchange. Bays and portions of Gulf of Mexico waters adjacent to the lakes and bays near the mouths of the rivers where Gulf sturgeon occur are believed to be important for feeding and/or migrating (for increased gene flow and, therefore, increased genetic stability among subpopulations).

When temperature drops occur that are associated with major cold fronts, researchers of the Escambia, Yellow, and Suwannee River subpopulations have been unable to locate adult Gulf sturgeon within the bays (Craft *et al.* 2001, Fox *et al.* in press, Edwards *et al.* in prep.). It is hypothesized that the cold fronts disperse sturgeon to more distant foraging grounds. It is currently unknown whether Gulf sturgeon undertake extensive offshore migrations, and further study is needed to determine whether important winter feeding habitat occurs in farther offshore areas.

Sulak and Clugston (1999) describe two hypotheses regarding where adult Gulf sturgeon may overwinter in the Gulf of Mexico to find abundant prey. The first hypothesis is that Gulf sturgeon spread along the coast in nearshore waters in depths less than 10 m (33 ft). The alternative hypothesis is that they migrate far offshore to the broad sedimentary plateau in deep water (40 to 100 m (131 to 328 ft)) west of the Florida Middle Grounds, where over twenty species of bottom-feeding fish congregate in the winter (Darnell and Kleypas 1987). Available data support the first hypothesis. Evaluation of tagging data has identified several nearshore Gulf of Mexico feeding migrations, but no offshore Gulf of Mexico feeding migrations. Telemetry data document Gulf sturgeon from the Pearl River and Pascagoula River subpopulations migrate from their natal bay systems to Mississippi Sound and move along the barrier islands on both the barrier island passes (Ross *et al.* 2001a, Rogillio *et al.* in prep.). Gulf sturgeon from the Choctawhatchee River, Yellow River, and Apalachicola River have been documented migrating in the nearshore Gulf of Mexico waters between Pensacola and Apalachicola Bays units (Fox *et al.* in press, F. Paruka pers. comm. 2002). Telemetry data from the Gulf of Mexico mainly show sturgeon in depths of 6 m (19.8 ft) or less (Ross *et al.* 2001a, Rogillio *et al.* in prep., Fox *et al.* in press, F. Paruka pers. comm. 2002).

River-Specific Fidelity

Stabile *et al.* (1996) analyzed Gulf sturgeon subpopulations from eight drainages along the Gulf of Mexico for genetic diversity. They noted significant differences among Gulf sturgeon stocks and suggested that they displayed region-specific affinities and may exhibit river-specific fidelity. Stabile *et al.* (1996) identified five regional or river-specific stocks (from west to east)—(1) Lake Pontchartrain and Pearl River, (2) Pascagoula River, (3) Escambia and Yellow Rivers, (4) Choctawhatchee River, and (5) Apalachicola, Ochlockonee, and Suwannee Rivers.

Tagging studies suggest that Gulf sturgeon exhibit a high degree of river fidelity. From 1981 to 1993, 4,100 fish were tagged in the Apalachicola and Suwannee Rivers. Of these, 860 fish (21 percent) were recaptured in the river of their initial collection. Only eight subadults (.002 percent) moved between rivers (FWS *et al.* 1995). Foster and Clugston (1997) noted that telemetered Gulf sturgeon in the Suwannee River returned to the same areas as the previous summer, suggesting that chemical cuing may influence distribution.

To date, biologists have documented a total of 21 Gulf sturgeon making inter-river movements from natal rivers. They are as follows—Apalachicola River to Suwannee River, six Gulf sturgeon (Carr *et al.* 1996b); Suwannee River to Apalachicola River, three sturgeon (Carr *et al.* 1996b, F. Parauka pers. comm. 2002); Choctawhatchee River to Apalachicola River, one sturgeon (F. Parauka pers. comm. 2002); Yellow River to Choctawhatchee River, three sturgeon (one adult female, one subadult female) (Craft *et al.* 2001); Yellow River to Louisiana Estuarine area, one female sturgeon (Craft *et al.* 2001); Escambia River to Yellow River, one mature female on spawning grounds (Craft *et al.* 2001); Suwannee River to Ochlockonee River, one sturgeon (FWS *et al.* 1995); Choctawhatchee River to Escambia River, one male sturgeon (Fox *et al.* in press); Choctawhatchee River to Escambia, one female sturgeon (Fox *et al.* in press); Pearl River (Bogue Chitto) to Pascagoula River, one sturgeon (Ross *et al.* 2001b); Choctawhatchee River to Pascagoula River, one subadult sturgeon (Ross *et al.* 2001b); and Pascagoula River to Yellow River, one sturgeon (Ross *et al.* 2001b). Tallman and Healey (1994) note that observed straying rates between rivers were not the same as actual gene flow rates, i.e. inter-stock movement does not equate to successful reproduction. The gene flow is low in Gulf sturgeon stocks, with each stock exchanging less than one mature female per generation (Waldman and Wirgin 1997).

Previous Federal Action

Federal action on the Gulf sturgeon began in 1982, when the fish was included as a Category 2 candidate species for listing in the FWS's vertebrate notices of review dated December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958), and in the animal notice of review dated January 6, 1989 (54 FR 554). At that time, the FWS gave Category 2 designation to species for which listing as threatened or endangered was possibly appropriate, but for which additional biological information was needed to support a proposed rule. A status report on the Gulf sturgeon (Hollowell 1980) had concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the FWS completed a report on the conservation status of the Gulf sturgeon, which recommended listing it as a threatened species (Barkuloo 1988).

The Services jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, we stated that designation of critical habitat was not prudent due to the species' broad range and the lack of knowledge about specific areas used by the species. We published the final rule on September 30, 1991 (56 FR 49653) to add Gulf sturgeon to the list of threatened species, and included a special rule under section 4(d) of the Act to allow the take of Gulf sturgeon, in accordance with applicable State fish and wildlife conservation laws and regulations, for educational and scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. In the final rule, we found that a critical habitat designation may be prudent but was not determinable. Section 4(b)(6)(C) of the Act provides that a concurrent critical habitat determination is not required with a final regulation implementing endangered or threatened status and that the final designation may be postponed for one additional year beyond the period specified in section 4(b)(6)(A), if a prompt determination of endangered or threatened status is essential to the conservation of the species, or critical habitat is not then determinable. We found that prompt determination of threatened status was essential to the conservation of the species and stated that we would make a final decision on designation of critical habitat by May 2, 1992. This decision, however, was not made.

On August 11, 1994, the Sierra Club Legal Defense Fund, Inc. (Fund), on behalf of the Orleans Audubon Society and Florida Wildlife Federation, gave written notice of their intent to file suit against the Department of the Interior for failure to designate critical habitat for the Gulf sturgeon within the statutory time limits established under the Act. The Fund filed suit on October 11, 1994 (*Orleans Audubon Society* v. *Babbitt,* Civ. No. 94–3510 (E.D. La)). Following a court order on August 9, 1995, granting the Fund's motion for summary judgement, the Services published a notice of decision on critical habitat designation for the Gulf sturgeon on August 23, 1995 (60 FR 43721). We determined that critical habitat designation was not prudent based on the lack of additional conservation benefit to the species.

On September 22, 1995, the Services and the Gulf States Marine Fisheries Commission approved the Gulf Sturgeon Recovery/Management Plan (FWS *et al.* 1995). The recovery plan established the criteria that must be met prior to the delisting of the Gulf sturgeon. The recovery plan also identified the actions that are needed to assist in the recovery of the Gulf sturgeon.

On August 12, 1996, the plaintiffs filed a motion to add the Department of Commerce as a defendant in the lawsuit. The Fund amended their complaint to challenge the August 1995 ''not prudent'' determination. On October 30, 1997, the court granted the plaintiffs' motion for summary judgment, with relief restricted to a remand of the ''not prudent'' determination to the Services, requiring that the Services publish a determination on designation of critical habitat, based on the best scientific information available. On February 27, 1998, we published a notice of decision (63 FR 9967) on critical habitat designation for the Gulf sturgeon. We again determined that lack of additional conservation benefit from critical habitat designation for this species made such designation not prudent.

On December 18, 1998, the Sierra Club sued the Services challenging the new determination not to designate critical habitat for the Gulf sturgeon (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.* CA No. 98–3788 (E.D. La.)). On January 25, 2000, the Court issued an order granting our motion for summary judgment and dismissing the complaint. The Sierra Club filed an appeal and, in March 2001, the United States Court of Appeals for the Fifth Circuit reversed the decision of the

District Court and instructed the District Court to remand the decision to us for reconsideration (*Sierra Club* v. *U.S. Fish and Wildlife Service, 245 F.3d 434* (5th Cir. 2001)). On August 3, 2001, the District Court issued an order directing us to publish a proposed decision concerning critical habitat designation for the Gulf sturgeon by February 2, 2002, and a final decision by August 2, 2002. Negotiation with the plaintiff resulted in an agreement to publish the proposed decision by May 23, 2002, and the final decision by February 28, 2003.

This proposal is the product of our reexamination of our 1998 prudency determination for the Gulf sturgeon. It reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

In order for habitat to be included in a critical habitat designation, the habitat features must be ''essential to the conservation of the species.'' Such critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Gulf sturgeon, they may not require special management or protection, and, therefore, may not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

When we designate critical habitat, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species, the recovery plan, articles in peer-reviewed journals, conservation plans developed by States and Counties, scientific status surveys, studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 of the Act take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

In our February 27, 1998, notice of decision, we determined that the

designation of critical habitat was not prudent for the Gulf sturgeon because such designation would not be beneficial to the species. However, on March 15, 2001, the United States Court of Appeals for the Fifth Circuit determined that this ''not prudent'' determination was made erroneously, and ordered us to reconsider it (*Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434). Accordingly, we withdraw our previous determination that designation of critical habitat will not benefit the Gulf sturgeon.

In reconsidering whether designation of critical habitat for the Gulf sturgeon will be prudent, we find that designation will be clearly beneficial to the species. Critical habitat will primarily benefit the sturgeon through the Act's consulting mechanism under section 7 of the Act. If critical habitat is designated for the Gulf sturgeon, other Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation will protect areas that are necessary for the conservation of the species. It may also serve to enhance awareness within Federal agencies and the general public of the importance of Gulf sturgeon habitat and the need for special management considerations.

A designation of critical habitat will provide Federal agencies with a clearer indication as to when consultation under Section 7 of the Act is required, particularly in cases where the action would not result in direct mortality, injury or harm to individuals of the species (*e.g.,* an action occurring within the critical habitat area when or where the Gulf sturgeon is not present). The critical habitat designation, in describing the essential features of the habitat, will also help determine which activities conducted outside the designated area are subject to section 7 consultation (*e.g.,* activities that may affect essential features of the designated area). For example, disposal of waste material in water adjacent to a critical habitat area may affect an essential feature (water quality) of the designated habitat and so would be subject to the provisions of section 7.

A critical habitat designation will also assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be given an additional review in section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species and the success of the action. With a designation of critical habitat, potential conflicts between Federal actions and listed species can be identified and possibly avoided early in the agency's process.

It is true that we are already working with Federal and State agencies, and private individuals and organizations, in carrying out conservation activities for the Gulf sturgeon, such as conducting population surveys and assessing habitat conditions. It is also true that these entities are fully aware of the distribution, status, and habitat requirements for the Gulf sturgeon, as they are currently known. However, as discussed above, some additional educational and informational benefit will result from designation.

Though the identification of known spawning habitat in this proposed rule may increase illegal harvest, we currently have no knowledge that illegal harvest is or has been an issue with the Gulf sturgeon. Since the States of Louisiana, Mississippi, Alabama, and Florida have deemed harvest illegal since the 1980s, and we found no records of illegal harvest during our literature review or in discussions with researchers, we have found no evidence that identification of Gulf sturgeon critical habitat would increase the degree of threat to the species. Therefore, we propose that designation of critical habitat is prudent for the Gulf sturgeon.

Methods and Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific information available concerning the species' present and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on the Gulf sturgeon, including the physical and biological features that are essential for the conservation of the species (see ''Primary Constituent Elements'' section), and identified the areas containing these features. The information used includes known locations; our own site-specific species and habitat information; State-wide Geographic Information System (GIS) coverages (*e.g.,* land ownership, bathymetry (the measurement of depths of water in oceans, seas, and lakes), and estuarine substrates); the final listing rule for the Gulf sturgeon; recent biological surveys and reports; peer-reviewed literature; our recovery plan; discussions and recommendations from Gulf sturgeon experts; and information received during Gulf sturgeon recovery meetings. The Gulf Sturgeon Recovery/Management Plan (FWS *et al.* 1995) contains valuable biological information, and it is cited throughout this document. However, the state of our knowledge regarding Gulf sturgeon biology and distribution has changed markedly since publication of the recovery plan for this species. The recovery criteria put forth in this recovery plan were deemed preliminary and may now warrant revision in light of new information. As a result of recent research and survey efforts directed towards this species, substantial portions of the biological information presented in the recovery plan are now dated or obsolete. Thus, although the recovery plan is a valuable source of information, it is not the final authority on the natural history and distribution of this species.

In the past, we had assumed, based on the information available at the time, that unoccupied habitat would be necessary for the recovery of the Gulf sturgeon. Since approval of the recovery plan in 1995 and our 1998 not prudent finding, we have collected new biological information on this species. We have analyzed what is necessary for the conservation of the Gulf sturgeon, as described above, and based on the best scientific information available at this time, we have determined that unoccupied habitat is not essential to the conservation of the Gulf sturgeon.

Determining the Scale of the Proposed Designation

We first evaluated the Gulf sturgeon in the context of its current distribution throughout the historic range to determine what portion of the range must be conserved to ensure recovery of the species. We considered several factors in this evaluation—(1) Maintaining overall genetic integrity and minimizing the potential for inbreeding, (2) retaining potential evolutionary importance at the margins of the species' range by protecting the eastern- and western-most subpopulations, (3) decreasing the extinction risk of a subpopulation by protecting adjacent subpopulations that can provide a rescue effect, if needed, (4) avoiding the potential for subpopulation extirpation from environmental catastrophes, and (5) protecting sufficient habitat to support full recovery of the species.

The historic range of the Gulf sturgeon included nine major rivers and several smaller rivers from the Mississippi River, Louisiana, to the Suwannee River, Florida, and in marine waters of the Central and Eastern Gulf of Mexico, south to Tampa Bay (Wooley and Crateau 1985, FWS *et al.* 1995).

Seven of these major river systems continue to support reproducing subpopulations. These include (from west to east)—the Pearl, Pascagoula, Escambia, Yellow/Blackwater, Choctawhatchee, Apalachicola, and Suwannee Rivers.

Gulf sturgeon is listed as a single Distinct Population Segment (DPS) throughout its range (see policy 61 FR 4722). However, this species exists as several subpopulations with limited mixing. The Gulf Sturgeon Recovery/Management Plan (FWS *et al.* 1995) noted the importance of identifying and maintaining genetic integrity and diversity during restoration efforts on Gulf sturgeon. A severe loss of genetic variability often leads to a noticeable decline in the fitness of a species (Soulé 1987). Evidence suggests that peripheral subpopulations are often genetically and morphologically divergent from central subpopulations (Lesica and Allendorf 1995). Distinct traits found in peripheral subpopulations may be crucial to the species, allowing adaptation in the face of environmental change (Lesica and Allendorf 1995, Allendorf *et al.* 1997). In light of these considerations, we determined that the inclusion of stocks or subpopulations from both the eastern and the western margins of the current range were necessary to protect the potential evolutionary importance of those subpopulations (Scudder 1989, Lesica and Allendorf 1995, Young and Harig 2001).

While telemetry data indicate that Gulf sturgeon from one genetically distinct drainage occasionally enter another river and also mix during the winter months in estuarine and marine habitats, a genetic analysis of tissue samples concluded that Gulf sturgeon exhibit a strong natal river fidelity, with stocks exchanging less than one mature female per generation on the average (Waldman and Wirgin 1997). These low gene flow estimates strongly suggest that natural recolonization of extirpated subpopulations of Gulf sturgeon would proceed slowly (Waldman and Wirgin 1997). Semi-isolated subpopulations are more vulnerable to the effects of demographic and environmental population fluctuations (Forney and Gilpin 1989, Wahlberg *et al.* 1996).

Gene flow estimates usually were higher between adjacent stocks, suggesting that migrants from semi-isolated subpopulations are exchanged chiefly with neighboring subpopulations (Waldman and Wirgin 1997). The loss of any intermediate subpopulations by a single environmental catastrophe could seriously limit a species' recovery (Kautz and Cox 2000, Young and Harig 2001). In light of this, we determined that it is necessary to propose as critical habitat rivers used by subpopulations evenly spaced between the western- and eastern-most limits of the current range. To ensure conservation of the species, subpopulations must be geographically located so that existing subpopulations could serve as sources of sturgeon emigration, albeit at a slow rate (Waldman and Wirgin 1997), to adjacent rivers as their subpopulations increase and so that they can provide a rescue effect if an adjacent subpopulation is extirpated (Brown and Kodric-Brown 1977, Hanski and Gyllenberg 1993, Young and Harig 2001).

Designating critical habitat for only a few subpopulation units, or for units not spaced in a manner that allows fish to exchange with other subpopulations, could increase the vulnerability of the species due to isolation of subpopulations. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox 2000). To reduce the risk of extinction through these processes, it is important to establish multiple protected subpopulations across the landscape (Soulé and Simberloff 1986, Wiens 1996).

Because of these considerations, we reached the conclusion that this proposal should include critical habitat units within the major river systems that support the seven currently reproducing subpopulations (FWS *et al.* 1995) and associated marine habitats. These river systems include (from west to east)—the Pearl, Pascagoula, Escambia, Yellow/Blackwater, Choctawhatchee, Apalachicola, and Suwannee Rivers. We believe that with proper protection and management, these units collectively represent habitat necessary to provide for the conservation of the species. The number, distribution, and range of Gulf sturgeon subpopulations included in these units is necessary to protect and sustain this species' genetic integrity and diversity and to provide a rescue effect, if needed. We believe that these seven river systems, with their associated estuarine and marine environments, represent habitat that is essential for the conservation of the Gulf sturgeon.

Assessing Specific Habitat Areas Essential to the Conservation of Gulf Sturgeon

Once we determined that the proper scale of the proposed critical habitat designation should cover the area occupied by the seven reproducing subpopulations, we evaluated which habitats used by those seven subpopulations are essential to their conservation. To conduct this evaluation, we assessed the critical life history components of Gulf sturgeon as they relate to habitat. Gulf sturgeon use the rivers for spawning, juvenile feeding, adult resting, and staging, and to move between the areas that support these components. Gulf sturgeon use the lower riverine, estuarine, and marine environment during winter months primarily for feeding, and more rarely, for inter-river migrations.

We then investigated what types of habitat support these life history components and where these areas of habitat are located. We evaluated empirical data, published and unpublished literature, and solicited the views of experts. These habitat components are described in the ''Primary Constituent Elements'' section of this proposed rule. We identified known or presumed spawning sites in each of the seven river systems. Some spawning sites have been conclusively identified; others are presumed due to the presence of suitable habitat. We identified known or presumed sites used for resting or staging. We identified areas where subadult and adult Gulf sturgeon occur during winter to feed. These areas are primarily in the marine or estuarine environment; young-of-year and juveniles feed mostly in the riverine environment. As a component of the above identifications, we gathered all available data on locations and habitat use of marked (tagged) fish.

To determine which areas should be proposed as critical habitat, we then evaluated where the necessary constituent elements of Gulf sturgeon habitat intersected with areas known to be used by both marked and unmarked fish. Detailed location data, where available, is included with each proposed unit description in the ''Critical Habitat Unit Descriptions'' section of this proposed rule. Because most of the sturgeon species' upstream movement is for spawning (Bane 1997; J. Hightower, U.S. Geological Survey (USGS)–Biological Resources Division, pers. comm. 2002), we have determined that the proposal should include areas as far upstream as the furthest known or presumed spawning site. Therefore, in rivers where spawning sites have been confirmed, the proposed units extend upstream to a geographically identifiable point such as a river confluence above those sites. In areas where spawning sites are presumed but not confirmed, we have included river reaches that contain the primary

constituent elements necessary for spawning (*e.g.*, appropriate substrate, and water quality and quantity), if those areas occur within close proximity of Gulf sturgeon historic and/or current sightings or captures, and if they are still accessible to sturgeon (*e.g.*, not blocked by dams). The proposed riverine critical habitat units include areas that continue to offer at least periodic passage of Gulf sturgeon to known and presumed spawning sites. Successful reproduction and recent recruitment have been documented in each riverine unit by eggs, larvae, and/or juveniles, or by a mixed age structure. We are proposing to protect spawning habitats from a catastrophic occurrence by including both the main stem spawning sites and at least one tributary site.

We have included riverine habitat from the river mouth up to and including spawning grounds in order to provide sufficient habitat necessary for the other riverine life stages of Gulf sturgeon while they reside in the riverine habitats. Habitat necessary for these life stages includes habitat for summer resting or staging areas, juvenile feeding, entire young-of-year life cycle, passage throughout the river, and passage into and out of estuarine habitat. All of the selected areas are known to be used by Gulf sturgeon for some portion of their life cycle.

Subadult and adult sturgeon use estuarine and marine areas for feeding and passage between river systems. Designation of critical habitat units encompassing estuaries and bays adjacent to the riverine units discussed above would protect unobstructed passage of sturgeon from feeding areas to spawning grounds. In evaluating the estuarine and marine areas, we first reviewed where Gulf sturgeon from the seven adjacent riverine units have been documented by telemetry relocations and tag returns from incidental captures. We also considered areas for which we have Gulf sturgeon sightings and targeted and incidental capture records. When available, we reviewed habitat data (*e.g.*, bathymetry, substrate type, and benthic organisms) associated with these estuarine and marine systems and compared these data with studies pertaining to the habitat requirements and preferences of Gulf sturgeon. We also evaluated data for evidence of critical migratory pathways between the river systems and the adjacent bays and Gulf of Mexico that allow Gulf sturgeon to travel to important feeding areas, as well as allow for the occasional travel to non-natal rivers for possible spawning and genetic interchange. Where documented interchanges have occurred, but no telemetry data exist to identify the migratory path used (*e.g.*, between the Pascagoula River and Yellow River, the Pascagoula and Choctawhatchee River, and between Suwanee River and Apalachicola River), we have not proposed a migration route. We then assessed the Gulf sturgeon's overall use of estuarine and marine waters and delineated specific critical habitat boundaries.

Migration and feeding may take place via the Gulf Intracoastal Waterway (GIWW) in some of the proposed units. Portions of the GIWW that consist primarily of excavated land cuts and canals have been excluded from this designation because they were not available historically, and, therefore, are not considered to be evolutionarily significant.

This proposed designation includes a significant portion, but not all, of the species' historic range. The fourteen proposed critical habitat units include riverine main stems and in some cases tributaries, distributaries (a river branch flowing away from the main stem in the floodplain) and adjacent estuarine and marine areas that contain one or more of the primary constituent elements essential for the conservation of the Gulf sturgeon (see ''Primary Constituent Elements'' section). The omission of some historically occupied river drainages and estuarine and marine areas from this proposed critical habitat designation does not diminish their individual or cumulative importance to the species. Rather, it is our determination that the seven riverine units with known spawning and seven associated estuarine and marine units included in this proposed rule include the habitats essential for the conservation of the Gulf sturgeon. With unobstructed passage in the estuarine and marine habitat, the subpopulations within the proposed designated critical habitat units may eventually populate presently unoccupied coastal river systems or augment adjacent surviving small subpopulations.

Although the Mobile River Basin is the largest Gulf of Mexico drainage east of the Mississippi River, it has been extensively impounded and modified for navigation. Further, there have been relatively limited reports of captures and no evidence of reproduction of Gulf sturgeon from that system for many years. Gulf sturgeon have been reported from other river systems. Some of these other systems historically supported a commercial fishery (*e.g.*, Mobile River, Ochlockonee River) and some may support small reproducing subpopulations (*e.g.*, Techefuncte River, Ochlockonee River, Mobile River); however, there is no recent documented spawning and we have no evidence at this time that these systems are essential to the conservation of the species. Therefore, we have not proposed them as critical habitat.

The data available to us are insufficient to support a determination that Lake Maurepas, Breton and Chandeleur Sounds, the Mississippi River Delta, St. Louis, Biloxi, Mobile, Perdido, St. Andrews, St. Joseph, Ochlockonee, or Apalachee Bays are essential to the conservation of the species. Records within the majority of these bays are relatively scarce. Although some Gulf sturgeon from the seven subpopulations may occasionally use these bays for winter feeding, there are insufficient data to support these bays' regular winter use or importance and no documented spawning. Therefore, we have not proposed these bays for designation as critical habitat.

The amount of research and status surveys conducted on many subpopulations is limited. Because of the limited availability of data specific to each river system and specific to the Gulf sturgeon's use of the marine environment, we are aware that habitat other than that identified in this proposed rule may later be found to be essential to the conservation of Gulf sturgeon. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Gulf sturgeon surviving in, or moving to rivers that are not being proposed for critical habitat will continue to receive protection under the section 7 of the Act jeopardy standard and the section 9 of the Act prohibitions on take (see ''Critical Habitat'' section).

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or

protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Based on the best available information, primary constituent elements essential for the conservation of the Gulf sturgeon include the following:

(1) Abundant prey items, such as detritus, aquatic insects, worms, and/or molluscs, within riverine habitats for larval and juvenile life stages; and abundant prey items, such as amphipods, lancelets, polychaetes, gastropods, ghost shrimp, isopods, molluscs and/or crustaceans, within estuarine and marine habitats for subadult and adult life stages.

(2) Riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone, or hard clay;

(3) A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging, and for maintaining spawning sites in suitable condition for egg attachment, egg sheltering, resting, and larval staging;

(4) Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(5) Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and

(6) Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats.

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (see ''Primary Constituent Elements'' section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the ''Effects of Critical Habitat'' section as ''Federal Actions That May Affect Critical Habitat and Require Consultation.'' For example, riverine spawning sites for Gulf sturgeon must be relatively sediment-free for successful egg development and may need best management practices implemented in the watershed upstream to prevent an excessive accumulation of sediment in these areas. None of the proposed critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the Gulf sturgeon. Therefore, we have determined that the proposed units may require special management or protection.

Proposed Critical Habitat Designation

The areas proposed for designation as critical habitat for the Gulf sturgeon provide one or more of the primary constituent elements described above. Tables 1 and 2 summarize the location and extent of proposed critical habitat. All of the proposed areas require special management considerations to ensure their contribution to the conservation of the Gulf sturgeon. The boundaries of proposed critical habitat units are described generally below.

TABLE 1.—APPROXIMATE LINEAR DISTANCE OF THE PROPOSED RIVERINE CRITICAL HABITAT UNITS FOR THE GULF STURGEON

[Main stems are listed first and tributaries are indented]

Critical habitat unit river systems	State	River kilometers	River miles
1. Pearl (East, West, and all distributaries)	Louisiana/Mississippi	616	383
Bogue Chitto		153	95
2. Pascagoula	Mississippi	130	81
Leaf		164	102
Bowie		24	15
Chickasawhay		232	144
Big Black Creek		10	6
3. Escambia Florida/Alabama		93	58
Conecuh		128	79
Sepulga		11	7
4. Yellow	Florida/Alabama	136	84
Blackwater		18	11
Shoal		13	8
5. Choctawhatchee	Florida/Alabama	224	139
Pea		92	57
6. Apalachicola	Florida	172	107
Brothers		23	14
7. Suwannee	Florida	286	178
Withlacoochee		19	12
Total		2,544	1,580

TABLE 2.—APPROXIMATE AREA OF THE PROPOSED ESTUARINE AND MARINE CRITICAL HABITAT UNITS FOR THE GULF STURGEON

Critical habitat unit estuarine and marine systems	State	Kilometers[2]	Miles[2]
8. Lake Borgne	Louisiana/	718	277
Little Lake	Mississippi/	8	3
Lake Pontchartrain	Alabama	763	295
Lake St. Catherine		26	10
The Rigolets		13	5
Mississippi Sound		1,879	725
MS near shore Gulf		160	62
9. Pensacola Bay	Florida	381	147
10. Santa Rosa Sound	Florida	102	39
11. Near shore Gulf of Mexico	Florida	442	171
12. Choctawhatchee Bay	Florida	321	124
13. Apalachicola Bay	Florida	683	264
14. Suwannee Sound	Florida	546	211
Total		6,042	2,333

Critical Habitat Unit Descriptions

The river reaches within units 1 to 7 proposed as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rm 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rm 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline,'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

Unit 1. Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi

Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from its confluence with Lazy Creek just upstream of its crossing with Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

The majority of recent Gulf sturgeon sightings in the Pearl River drainage have occurred downstream of the Pools Bluff sill on the Pearl River, near Bogalusa, Washington Parish, Louisiana, and downstream of the Bogue Chitto sill on the Bogue Chitto River in St. Tammany Parish, Louisiana. Between 1992 and 1996, 257 Gulf sturgeon were captured from the Pearl River system (West Middle River, Bogue Chitto River, East Pearl River, and West Pearl River). The subpopulation was estimated at 292 fish, of which only 2 to 3 percent were adults (Morrow *et al.* 1998b). The annual mortality rate was calculated to be 25 percent. Preliminary results from captures between 1992 and 2001 suggest a stable subpopulation of 430 fish, with approximately 300 adults (Rogillio *et al.* in prep.). These Pearl River distributaries are used for migration to spawning grounds, summer resting holes, and juvenile feeding. Gulf sturgeon have been captured in all of these distributaries and all are proposed as critical habitat.

The presence of juvenile Gulf sturgeon (1 to 4 years old) in the Pearl River system indicates successful spawning at some location in the Pearl River system. It is believed that the only suitable habitat for spawning for the Pearl River subpopulation of Gulf sturgeon occurs above the sills on the Pearl River and the Bogue Chitto River with access to these areas only during high flows (Morrow *et al.* 1996, Morrow *et al.* 1998a). Bedrock and limestone outcropping that are typical of Gulf sturgeon spawning areas in other systems do not occur here. However, within the Pearl drainage, spawning areas likely include soapstone, hard clay, gravel and rubble areas, and undercut banks adjacent to these substrates (W. Slack pers. comm. 2001). Although the Pools Bluff sill blocks

upstream movement on the Pearl River during periods of low water, potential spawning sites have been identified upstream of the sill at various locations between Monticello, Lawrence County, Mississippi, and the Ross Barnett Dam spillway, Hinds and Rankin Counties, Mississippi (F. Parauka pers. comm. 2002). Gulf sturgeon have also been recently reported as far upstream as Jackson, Hinds County, Mississippi (Morrow *et al.* 1996, Lorio 2000). The Ross Barnett Dam upstream of Jackson prevents sturgeon movement further upstream at all flow conditions. Identified suitable spawning habitat, presence of juvenile fish, and documented adult captures support our inclusion of the Pearl River up to the spillway of the Ross Barnett Dam.

The Bogue Chitto sill, located on the Bogue Chitto River near its confluence with the Pearl River, also hinders movement of Gulf sturgeon upstream of the sill except during high water flows. Suitable spawning habitat occurs within the Bogue Chitto upriver of the sill (F. Parauka pers. comm. 2002, W. Slack pers. comm. 2001) and juvenile, adult and subadult Gulf sturgeon have been documented on the Bogue Chitto River as far upstream as McComb, Pike County, Mississippi (D. Oge, Department of Environmental Quality, pers. comm. 2002; F. Parauka pers. comm. 2002; W. Slack pers. comm. 2001). We, therefore, have proposed as critical habitat the main stem of the Bogue Chitto River upstream of Quins Bridge (Mississippi State Highway 570) to its confluence with Lazy Creek.

Unit 2. Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi

Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bowie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bowie River main stem beginning at its confluence with Bowie Creek and Okatoma Creek, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.

Subpopulation estimates, calculated from sturgeon captures in 1999 and 2000 in the summer holding areas on the Pascagoula River, range between 162 and 216 individuals (Heise *et al.* 1999a, Ross *et al.* 2001b). Due to the sampling technique, these estimates are based primarily on large fish and do not account for juvenile or subadult fish (S. Ross, University of Southern Mississippi (USM), pers. comm. 2001).

Gulf sturgeon spawning on the Bowie River was confirmed via egg collection in 1999 (Slack *et al.* 1999, Heise *et al.* 1999a). This is the only confirmed spawning area in the Pascagoula River drainage. Downstream, the Bowie River is sometimes used as a summer holding area (Ross *et al.* 2001b). Gulf sturgeon have been documented using the area above the known spawning habitat (Reynolds 1993, W. Slack pers. comm. 2002). Additional suitable spawning habitat has been identified in this upstream reach (F. Parauka pers. comm. 2002), and since Gulf sturgeon have rarely been documented upstream of spawning grounds, we have also included the 19 rkm (12 rmi) of river reach upstream of the confirmed spawning grounds. Confirmed use for spawning and use as a summer holding area support the inclusion of the Bowie River as proposed critical habitat.

Documented sightings of Gulf sturgeon and identified suitable spawning habitat upstream to Mississippi State Highway 588 (Reynolds 1993, W. Slack pers. comm. 2002, F. Parauka pers. comm. 2002), confirmed use as a migration corridor, and confirmed use by juvenile Gulf sturgeon (W. Slack pers. comm. 2002) support the inclusion of the Leaf River as proposed critical habitat.

Documented sightings of Gulf sturgeon using the Chickasawhay River (Miranda and Jackson 1987, Reynolds 1993, Ross *et al.* 2001b) upstream to Quitman (Ross *et al.* 2001b), and the presence of apparently suitable spawning habitat at Quitman (F. Parauka pers. comm. 2002), support the inclusion of this river reach as proposed critical habitat for spawning, migration, and juvenile feeding. We have included the suitable spawning habitat located within .8 rkm (.5 rmi) upstream of Mississippi State Road 512 and have extended the proposed designation 9 rkm (5.5 rmi) upstream to the confluence with Oaky Creek for ease of identification.

Gulf sturgeon use the West and East distributaries of the Pascagoula River during spring and fall migrations (Ross *et al.* 2001b). Summer resting areas have been consistently documented on Big Black Creek and on the Pascagoula River (Ross *et al.* 2001a and b). Confirmed use for migration and/or summer resting areas and probable feeding use by juveniles support our inclusion of these river reaches.

Unit 3. Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama

Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers and shorelines.

Sufficient data are not yet available to estimate historic or current subpopulation sizes of the Escambia River drainage subpopulation. Collection and tagging of Gulf sturgeon, monitoring, and eventual subpopulation estimates are in the initial phases on the Escambia River in Florida and the Conecuh River in Alabama.

Suitable spawning habitat (Parauka and Giorgianni in prep.) and a reported larval sighting (N. Craft, Department of Environmental Protection (DEP), pers. comm. 2001), just below the Point A Dam (221 rkm (137 rmi) on the Conecuh River support inclusion of critical habitat upstream to the Point A Dam. The Point A Dam prevents sturgeon movement further upstream at all flow conditions. In addition, spawning has

been confirmed between rkm 161 and 170 (rmi 100 and 105.6) (Craft *et al.* 2001) on the Conecuh River. The use of the river main stem for spawning, adult resting areas, juvenile feeding and resting, and the use for migration to these sites supports our inclusion of the Escambia/Conecuh River main stem as proposed critical habitat for the Escambia River subpopulation of Gulf sturgeon.

Historic sightings reported from the 1910s and 1920s, and as recently as 1991, have been documented in Escambia County, Alabama, on the Sepulga River (Reynolds 1993). Estes (1991) describes the Sepulga as having smooth rock walls, and long pools with stretches of rocky shoals and sandbars. We included the Sepulga River reach upstream to Alabama County Road 42, Escambia County, Alabama, because it has suitable spawning habitat and documented sightings.

We believe it is most likely that Gulf sturgeon use the Escambia River main stem and all the distributaries for exiting and entering the Escambia/Conecuh River. Gulf sturgeon have been documented to use distributaries near the river mouth within other systems (*e.g.,* Suwannee, Pearl, and Pascagoula River systems) for migration into and out of riverine habitat. We, therefore, have included all distributaries on the Escambia River system (*i.e.,* White River, Little White River, Simpson River, and Dead River) in Unit 3.

Unit 4. Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama

Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers and shorelines.

The USGS conducted a subpopulation study in the Yellow River system during the spring (May to July) and fall (October) of 2001. Based on the capture of 98 fish in the spring and the capture/recapture of 94 fish that fall, the USGS estimated the subpopulation to consist of 580 Gulf sturgeon of 1 m (3.3 ft) or greater in size (M. Randall, USGS, pers. comm. 2001). This estimate excludes fish younger than 3 to 4 years of age.

Five distinct limestone outcrops have been documented as possible spawning sites on the Yellow River, between rkm 43 and 134 (rmi 26.7 and 83.3) (Parauka and Giorgianni in prep.). Several sites consist of brittle marl and limestone, and others of porous limestone. The lowest downstream site (rkm 43 (rmi 26.7)) is a primitive rock revetment, a manmade structure with a fair amount of rock substrate (Craft *et al.* 2001). In recent years, Alabama State biologists have observed young-of-year Gulf sturgeon near limestone outcrops 3.2 km (2 mi) south of Alabama State Highway 55 (136 rkm (84 rmi)) (Craft *et al.* 2001), which confirms that reproduction is occurring within this subpopulation. The river upstream of Alabama State Highway 55 is shallow, sandy, and creek-like and, therefore, not believed suitable for spawning (M. Randall pers. comm. 2001; F. Parauka pers.comm. 2001; G. Morgan, Conecuh National Forest, pers. comm. 2001). Preliminary surveys located four potential summer resting areas on the Yellow River main stem (Craft *et al.* 2001). Recent fish captures and the confirmation of spawning at the furthest upstream spawning habitat location near Alabama State Highway 55 support our inclusion of the Yellow River main stem to Alabama State Highway 55 (136 rkm (84 rmi)) as proposed critical habitat for the Yellow River subpopulation of Gulf sturgeon.

The inclusion of the Shoal River, from the Yellow River confluence upstream to the Florida Highway 85 bridge (13 rkm (8 rmi)) , is supported as proposed critical habitat because it is a confirmed summer resting area (Lorio 2000). The potential for distributaries Weaver River and Skim Lake to be used for migration to and from the Yellow River system (Craft *et al.* 2001) supports their inclusion as proposed critical habitat. The current and historic use of deep holes by Gulf sturgeon on the Blackwater River main stem and between Wright Basin and Cooper Basin demonstrate the importance of this area for summer resting and staging (Reynolds 1993, Craft *et al.* 2001) and support its inclusion as proposed critical habitat for the Yellow River subpopulation.

Unit 5. Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama

Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

Preliminary estimates of the size of the Gulf sturgeon subpopulation in the Choctawhatchee River system are 2,000 to 3,000 fish over 61 cm (24 inches (in)) total length (F. Parauka pers. comm. 2001).

Biologists have located Gulf sturgeon within .8 rkm (.5 rmi) downstream of the Elba Dam, Coffee County, Alabama, on the Pea River (Lorio 2000) and have identified suitable spawning habitat from the Elba Dam to the Pea River mouth (Parauka and Giorgianni in prep., Zehfuss *et al.* in prep.). The Elba Dam prevents sturgeon movement further upstream at all flow conditions. This river reach has one confirmed spawning site, and Gulf sturgeon often use the lower reach for summer resting (Fox *et al.* 2000, Hightower *et al.* in press). Suitable spawning and resting habitat, confirmed spawning, and young-of-year and juvenile feeding (F. Parauka pers. comm. 2001) support inclusion of the Pea River reach as proposed critical habitat.

Five spawning sites and seven resting areas have been identified on the Choctawhatchee River main stem between the river mouth (0 rkm (0 rmi)) and upstream to 150 rkm (93 rmi) (Hightower *et al.* in press, Zehfuss *et al.* in prep.). Biologists have identified suitable spawning habitat (limestone outcrops) periodically between 135 rkm (84 rmi) to the confluence of the West

Fork Choctawhatchee River and East Fork Choctawhatchee River (224 rkm (139 rmi)) (H. Blalock-Herod, FWS, pers. comm. 2002; Parauka and Giorgianni in prep.; Zehfuss *et al.* in prep.). Fox *et al.* (2000) located a male at 150 rkm (93 rmi) and another male in spawning condition near Newton (214 rkm (133 rmi)) on the Choctawhatchee River, 8 rkm (5 rmi) downstream of the confluence of the West Fork Choctawhatchee River and East Fork Choctawhatchee River. Since Gulf sturgeon rarely occur upstream of spawning grounds, we have included up to the confluence of West Fork Choctawhatchee River and East Fork Choctawhatchee River for ease of identification and with the probability of unconfirmed spawning grounds. Suitable habitat, confirmed spawning, and young-of-year and juvenile feeding support the inclusion of the Choctawhatchee River main stem as proposed critical habitat.

No sturgeon have been documented within Holmes Creek, except for the section that connects the Choctawhatchee River and Boynton Cutoff, north and south. We have included this river section of Holmes Creek because it acts as part of the Choctawhatchee River main stem. In 1994, Gulf sturgeon were captured during March and April at the mouths of Indian River, Cypress River, and Bells Leg, indicating that sturgeon probably use these distributaries as migratory corridors to and from the Choctawhatchee River main stem. All distributaries, including the Indian River, Cypress River, Bells Leg, and Mitchell River, are included as proposed critical habitat.

Unit 6. Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida

Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

Based on mark/recapture studies conducted in 1998 and 1999 in the Apalachicola River downstream of Jim Woodruff Lock and Dam, the summer subpopulation of subadult and adult Gulf sturgeon was estimated to be between 270 and 321 individuals (FWS 1998, 1999). Seventy-one sturgeon were collected in the upper Brothers River, upstream of the Brickyard Cutoff and downstream of Bearman Creek between June and September 1999 (FWS 1999, Lorio 2000). Gulf sturgeon captured on the Brothers River have not been included in the Apalachicola River subpopulation size estimate although they are believed to be part of the subpopulation.

The Gulf sturgeon became restricted to the portion of the Apalachicola River downstream of the Jim Woodruff Lock and Dam upon the construction of the dam in the 1950s. Wooley *et al.* (1982) documented the capture of two Gulf sturgeon larvae on the Apalachicola River just downstream of the Jim Woodruff Lock and Dam, thereby confirming successful spawning up to the dam. Resting aggregations are often seen at the base of the dam. Seven potential spawning sites have been identified in the upper Apalachicola River between Highway 20 and the Jim Woodruff Lock and Dam (120 to 171 km (76 to 106 rmi)) (Parauka and Giorgianni in prep.). Suitable spawning and resting habitat, confirmed spawning, and young-of-year and juvenile feeding support inclusion of the Apalachicola River as proposed critical habitat.

The entire main stem of the Brothers River, a major tributary of the Apalachicola River, is also included as proposed critical habitat. Spawning has not been documented within this tributary, but an important resting area is located in the uppermost section of the Brothers River between Brickyard Cutoff and Bearman Creek (FWS 1999, Lorio 2000). Sturgeon use the lower Brothers River as a resting and possible osmoregulation area (staging) before migrating into the estuarine and marine habitats for winter feeding (Wooley and Crateau 1985). The Apalachicola River distributaries, including the East River, St. Marks River and Little St. Marks River, are included, based on information derived from other systems. Gulf sturgeon tend to use more than just the main stem for migration into and out of the river systems (*e.g.,* Suwannee, Choctawhatchee, and Pearl River systems).

Unit 7. Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida

Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

The Suwannee River supports the largest Gulf sturgeon subpopulation among the coastal rivers of the Gulf of Mexico (Huff 1975, Gilbert 1992). Sulak and Clugston (1999) reported 5,344 uniquely tagged Suwannee River sturgeons from 1986 to 1998. Multiple models using various age classes have been used to estimate the subpopulation size of Gulf sturgeon on the Suwannee River system. Chapman *et al.* (1997) estimated the subpopulation at 3,152 fish greater than age 6. Sulak and Clugston's (1999) estimate was 7,650 individuals greater than 61 cm (24 in) total length and older than age 2. Pine *et al.* (2001) estimated the Suwannee River subpopulation at 5,500 individuals ages 2 to 25. Based on intensive egg sampling efforts conducted between 1993 and 1998, Sulak and Clugston (1999) estimated that 30 to 90 female fish spawn per year.

Marchant and Shutters (1996) collected two Gulf sturgeon eggs in April 1993 on the Suwannee River. These were the first eggs reported from the wild for Gulf sturgeon. Between 1993 and 1998, three spawning sites were confirmed with the collection of Gulf sturgeon eggs on artificial substrate samplers (Marchant and Shutters 1996, Sulak and Clugston 1999). Young-of-year have been documented using between rkm 10 to 237 (rmi 6.2 to 147.3) on the Suwannee River main stem (Carr *et al.* 1996a, Sulak and Clugston 1999). The young-of-year sturgeon located at rkm 237 (rmi 147.3), north of Interstate 75, by Sulak and Clugston (1999) was likely spawned in the river as far upstream as Big Shoals and was captured on its way downstream (M. Randall pers. comm. 2002). It is believed that the farthest upstream that sturgeon spawn during high water is Big Shoals, near White Springs, Hamilton and Columbia Counties, Florida, but adult sturgeon are probably unable to move upstream of Big Shoals (Huff 1975; K. Sulak, USGS, pers. comm. 2002; M. Randall pers. comm. 2002).

Suitable spawning habitat has been identified upstream to Big Shoals (Huff 1975; H. Blalock-Herod, FWS, pers. comm. 2002). Foster and Clugston (1997) located five major resting areas throughout the Suwannee River. A deep river bend and a shallow sandy section were characteristic features of the resting areas (Foster and Clugston 1997). Confirmed use for spawning, identified and probable spawning habitat upstream to Big Shoals, young-of year and juvenile feeding, and summer resting support the inclusion of the Suwannee River as proposed critical habitat. For ease of identification, the Suwannee River has been included upstream of Big Shoals .8 rkm (.5 rmi) to its confluence with Long Branch Creek.

Adult Gulf sturgeon sightings and suitable spawning habitat on the lower Withlacoochee River near Florida State Road 141, Hamilton and Madison Counties, Florida, support the inclusion of this area as proposed critical habitat. We have included shoals (5 rkm (3 rmi)) located just upstream of where sturgeon have been observed as possible spawning habitat, and have stopped at Florida State Road 6 (14 rkm (9 rmi)), upstream from the shoals, for ease of identification.

The Suwannee River branches near its mouth into the East Pass and West Pass. Gulf sturgeon adults use the East Pass and West Pass for emigration and immigration (Mason and Clugston 1993, Edwards *et al.* in prep.). The West pass is divided into two primary channels—Wadley Pass, connected to the Gulf of Mexico by a straight dredged channel across the northern portion of the Sound, and Alligator Pass, used by juveniles (Huff 1975), connected to the Gulf of Mexico by an undredged, natural channel. Confirmed use of the East Pass, West Pass, and Alligator Pass, and probable use of the Wadley Pass by adult and juvenile Gulf sturgeon for migration and feeding support the inclusion of all distributaries of the Suwannee River as proposed critical habitat.

Unit 8. Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama

Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Proposed critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shoreline of the mainland between Heron Bay Point, Mississippi and Point aux Pins, Alabama. Proposed critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nautical mile (nm) (1.9 km) seaward of the western most extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815(c), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8′W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

The Pearl River and its distributaries flow into The Rigolets, Little Lake, and Lake Borgne, the western extension of Mississippi Sound. The Rigolets connect Lake Pontchartrain and Lake St. Catherine with Little Lake and Lake Borgne. The Pascagoula River and its distributaries flow into Pascagoula Bay and Mississippi Sound.

This proposed unit provides juvenile, subadult and adult feeding, resting, and passage habitat for Gulf sturgeon from the Pascagoula and the Pearl River subpopulations. One or both of these subpopulations have been documented by tagging data, historic sightings, and incidental captures as using Pascagoula Bay, The Rigolets, the eastern half of Lake Pontchartrain, Little Lake, Lake St. Catherine, Lake Borgne, Mississippi Sound, within 1 nm (1.9 km) of the nearshore Gulf of Mexico adjacent to the barrier islands and within the passes (Davis *et al.* 1970, Reynolds 1993, Rogillio 1993, Morrow *et al.* 1998a, Ross *et al.* 2001a, Rogillio *et al.* in prep., F. Parauka pers. comm. 2002). Substrate in these areas ranges from sand to silt, all of which contain known Gulf sturgeon prey items (Abele 1986, American Fisheries Society 1989, Menzel, 1971).

The Rigolets is a 11.3 km (7 mi) long and about 0.6 km (0.4 mi) wide passage connecting Lake Pontchartrain and Lake Borgne (U.S. Department of Commerce (USDOC) 2002). This brackish water area is used by adult Gulf sturgeon as a staging area for osmoregulation and for passage to and from wintering areas (Rogillio *et al.* in prep.). Lake St. Catherine is a relatively shallow lake with depths averaging approximately 1.2 m (4 ft), connected to The Rigolets by Sawmill Pass. Bottom sediments in Sawmill Pass are primarily silt, while Lake Catherine's bottom is composed of silt and sand (Barett 1971). Incidental catches of Gulf sturgeon are documented from Lake St. Catherine and Sawmill Pass (Reynolds 1993; H. Rogillio, Louisiana Department of Wildlife and Fisheries, pers. comm. 2002). Based on the proximity of Little Lake, Lake St Catherine, and Sawmill Pass to The Rigolets and Pearl River, we believe these areas are also used for staging and feeding and, therefore, are including them with the Rigolets as proposed critical habitat.

Rogillio (1990) and Morrow *et al.* (1996) indicated that Lake Pontchartrain and Lake Borgne were used by Gulf sturgeon as wintering habitat, with most catches during late September through March. Lake Pontchartrain is 57.9 km (36 mi) long, 35.4 km (22 mi) wide at its widest point, and 3 to 4.9 m (10 to 16 ft) deep (USDOC 2002). Morrow *et al.* (1996) documented Gulf sturgeon from the Pearl River system using Lake Pontchartrain (verified by tags) and summarized existing Gulf sturgeon records, which indicated greater use of the eastern half of Lake Pontchartrain. Although Rogillio *et al.* (in prep.) did not relocate any of their sonic tagged adult Gulf sturgeon in Lake Pontchartrain, H. Rogillio (pers. comm. 2002) believes the eastern part of this lake to be an important winter habitat for juveniles and subadults based on previous records. We believe that Gulf sturgeon feed in Lake Pontchartrain during the winter. The Lake Pontchartrain Causeway, twin toll highway bridges, extends 33.6 km (20.9 mi) across Lake Pontchartrain from Indian Beach on the south shore to Lewisburg and Mandeville on the north shore. Sediment data from Lake Pontchartrain indicate sediments have a

greater sand content east of the causeway (Barret 1976, Manheim *et al.* 2002). Most records from Lake Pontchartrain are located east of the causeway, with concentrations near Bayou Lacombe and Goose Point, both on the eastern north shore (Reynolds 1993, Morrow *et al.* 1996). Gulf sturgeon have also been documented west of the causeway, generally near the mouths of small river systems (Davis 1970). We have excluded the western half of Lake Pontchartrain, however, because we believe that the sturgeon using these areas are coming from these western tributaries and not the Pearl River.

Lake Pontchartrain connects by The Rigolets with Lake Borgne. Lake Borgne, the western extension of Mississippi Sound, is partly separated from Mississippi Sound by Grassy Island, Half Moon (Grand) Island and Le Petit Pass Island. Lake Borgne is approximately 14.3 km (23 mi) in length, 3 to 6 km (5 to 10 mi) in width and 1.8 to 3 m (6 to 10 ft) in depth (USDOC 2002). Most of Lake Borgne sediment is clay and silt (Barett 1971). Many Gulf sturgeon were anecdotally reported as taken incidentally in shrimp trawls in Lake Borgne 0.6 to 1.2 km (1 to 2 mi) south of the Pearl River between August and October from the 1950s through the 1980s (Reynolds 1993). There are twenty-two additional records of Gulf sturgeon in Lake Borgne (D. Walther, FWS, pers. comm. 2002). Known locations are spread out around the perimeter of the Lake, including at the mouth of The Rigolets, Violet Canal, Bayou Bienvenue, Polebe, Alligator Point, and at Half Moon Island (Reynolds 1993). We are proposing to include all of Lake Borgne as critical habitat.

The Mississippi Sound is separated from the Gulf of Mexico by a chain of barrier islands, including Cat, Ship, Horn, and Petit Bois Islands. Natural depths of 3.7–5.5 m (12 to 18 ft) are found throughout the Sound and a channel 3.7 m (12 ft) deep has been dredged where necessary from Mobile Bay to New Orleans (USDOC 2001). Incidental captures and recent studies confirm that both Pearl River and Pascagoula River adult Gulf sturgeon winter in the Mississippi Sound, particularly around barrier islands and barrier islands passes (Reynolds 1993, Ross *et al.* 2001a, Rogillio *et al.* in prep.). Pascagoula Bay is adjacent to the Mississippi Sound. Gulf sturgeon exiting the Pascagoula River move both east and west, with telemetry recoveries as far east as Dauphin Island and as far west as Cat Island and the entrance to Lake Pontchartrain, Louisiana (Ross *et al.* 2001a). Gulf sturgeon from the Pearl River subpopulation have been documented scattered between Cat Island, Ship Island, Horn Island, and east of Petit Bois Islands to the Alabama State line (Rogillio *et al.* in prep.). Gulf sturgeon have also been documented within 1 nm (1.9 km) off the barrier islands of Mississippi Sound. We, therefore, have included 1 nm (1.9 km) offshore of the barrier islands of Mississippi Sound. Habitat used by Gulf sturgeon in the vicinity of the barrier islands is 1.9 to 5.9 m (6.2 to 19.4 ft) deep (average 4.2 m (13.8 ft)), with clean sand substrata (Heise *et al.* 1999b, Ross *et al.* 2001a, Rogillio *et al.* in prep.). Preliminary data from substrate samples taken in the barrier island areas indicate that all samples contained lancelets (Ross *et al.* 2001a). Inshore locations where Gulf sturgeon were located (Deer Island, Round Island) were 1.9 to 2.8 m (6.2 to 9.2 ft) deep and all had mud (mostly silt and clay) substrata (Heise *et al.* 1999b) typical of substrates supporting known Gulf sturgeon prey.

Unit 9. Pensacola Bay System in Escambia and Santa Rosa Counties, Florida

Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810 (g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, Florida. The lateral extent of Unit 9 is the MHW line on each shoreline of the included water bodies.

The Pensacola Bay system includes five interconnected bays, including Escambia Bay, Pensacola Bay, Blackwater Bay, East Bay, and the Santa Rosa Sound. The Santa Rosa Sound is addressed separately in proposed unit 10. The Escambia River and its distributaries (Little White River, Dead River, and Simpson River) empty into Escambia Bay, including Bass Hole Cove, Saultsmar Cove, and Macky Bay. The Yellow River empties into Blackwater Bay. The entire system discharges into the Gulf of Mexico, primarily through a narrow pass at the mouth of Pensacola Bay.

The Pensacola Bay system provides winter feeding and migration habitat for Gulf sturgeon from the Escambia River and Yellow River subpopulations. Over the past four years, researchers of the Florida Department of Environment Protection (FDEP) have conducted tracking studies in the Pensacola Bay system to observe Gulf sturgeon winter migrations. They have identified specific areas in the bays where Escambia River and Yellow River Gulf sturgeon collect, or migrate through, during the fall and winter season. These studies also identified two main habitat types where Gulf sturgeon concentrate during winter months. Movement is generally along the shoreline area of Pensacola Bay. Gulf sturgeon showed a preference for several areas in the bay, including Redfish Point, Fort Dickens, and Escribano Point, near Catfish Basin (FWS 1998, Craft *et al.* 2001). Sandy shoal areas, located along the south and east side of Garcon Point, south shore of East Bay (Redfish Point area) and near Fair Point, appear to be commonly used, especially in the fall and early spring. During midwinter, common areas are in deep holes located north of the barrier island at Ft. Pickens, south of the Pensacola Naval Air Station, and at the entrance of Pensacola Pass. The depth in these areas ranges from 6 to 12.1 m (20 to 40 ft). Other areas where tagged fish were frequently located include Escribano Point, near Catfish Basin, and the mouth of the Yellow River. Previous incidental captures of Gulf sturgeon have been recorded in Pensacola Bay, Big Lagoon, and Bayou Grande (Reynolds 1993, Lorio 2000).

Unit 10. Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida

Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, Florida. The eastern boundary is the U.S. Highway 98 bridge in Fort Walton Beach, Florida. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

The Santa Rosa Sound is a lagoon between the mainland and Santa Rosa Island that connects Pensacola Bay in the west with Choctawhatchee Bay in the east. The Sound extends approximately 57.9 km (35.9 mi) along an east-west orientation, varying in width between 0.32 and 3.5 km (0.2 to 2.2 mi) (FDEP 1993). The Intracoastal Waterway transects the sound. The Santa Rosa Sound is proposed as critical habitat because we believe it provides one continuous migratory pathway between Choctawhatchee Bay, Pensacola Bay, and the Gulf of Mexico for feeding and genetic interchange. Within the last 3,000 years, periodic shoaling closed the opening of

Choctawhatchee Bay to the Gulf of Mexico. For many years, the Santa Rosa Sound provided the only way for Choctawhatchee River Gulf sturgeon to migrate to the Gulf of Mexico (Wakeford 2001). Recent locations of subadult and adult Gulf sturgeon within the Santa Rosa Sound confirm its present use by the Choctawhatchee River subpopulations (F. Parauka pers. comm. 2002, Fox *et al.* in press). The Escambia and Yellow River subpopulations may also use this area due to its close proximity. Gulf sturgeon have been located mid-channel and in shoreline areas in 2 to 5.2 m (6.6 to 17.1 ft) depths and sand substrate. The approximate length of the proposed critical habitat unit is 52.8 km (33 miles). Bridges were chosen as the eastern and western boundaries for ease in identification. Any portion of the sound not included in this unit is captured by the adjacent critical habitat units.

Unit 11. Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties in Florida

Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′ W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′ W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

Unit 11 includes winter feeding and migration habitat for Gulf sturgeon from the Yellow River, Choctawhatchee River, and Apalachicola River subpopulations. Telemetry relocation data suggest that these subpopulations feed in nearshore Gulf of Mexico waters between their natal river systems (Fox *et al.* in press, F. Parauka pers. comm. 2002). Gulf sturgeon from the Choctawhatchee River subpopulation have been documented both east and west of Choctawhatchee Bay (F. Parauka pers. comm. 2002, Fox *et al.* in press). In the winter of 2001–2002, the USGS and FWS attached pop-up satellite tags to 20 Gulf sturgeon (12 from the Suwannee River, 4 from the Choctawhatchee River, 2 from the Apalachicola, and 2 from the Yellow River) to investigate winter feeding migrations in the Gulf of Mexico. Due to a design flaw, errors in attachment, or sturgeon's ability to successfully knock the tags off, the tags failed to report reliable data with only two exceptions. One of the Choctawhatchee-tagged Gulf sturgeon was located in Hogtown Bayou in Choctawhatchee Bay. This provided no new information, as we already knew that some adult Gulf sturgeon overwinter in this bayou. The other operating tag, however, was one that had been attached to a Yellow River Gulf sturgeon. Sonic tracking in the vicinity of that Yellow River Gulf sturgeon led to the relocation of other sonic tagged Gulf sturgeon. Sonic-tagged individuals from three different subpopulations (Choctawhatchee, Yellow, and Apalachicola Rivers) were relocated on multiple occasions in close proximity to one another, suggesting an important feeding area just offshore of Mexico Beach, Crooked Island East, and Crooked Island West over sand substrate. The data suggest that Gulf sturgeon from the Yellow River, Choctawhatchee River, and Apalachicola River remain within 1.6 km (1 mi) of the coastline between these river systems (F. Parauka pers. comm. 2002). Examination of bathymetry data along the Gulf of Mexico coastline between the Pensacola Bay and Apalachicola Bay reveals that depths of less than 6 m (19.7 ft), within which Gulf sturgeon are generally found, are all contained within 1 nm (1.9 km) from shore. Gulf nearshore substrate contains unconsolidated, fine-medium grain sands which support crustaceans such as mole crabs, sand fleas, various amphipod species, and lancelets (Menzel 1971, Abele 1986, American Fisheries Society 1989). Based on their direction of movement over time, it appeared these Gulf sturgeon were feeding in the nearshore Gulf of Mexico on route to their natal rivers. Given this information we are including the nearshore (up to 1 nm (1.9 km)) Gulf of Mexico waters between Pensacola and Apalachicola Bays.

Unit 12. Choctawhatchee Bay in Okaloosa and Walton Counties, Florida

Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, and rivers are excluded at their mouths/entrances. The western boundary is the U.S. Highway 98 bridge at Fort Walton Beach, Florida. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810(f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

Choctawhatchee Bay provides important habitat for maintaining the health of subadult and adult Gulf sturgeon as evidenced by a large number of Gulf sturgeon overwintering in the system (FWS 1997, 1998; Parauka *et al.* in press). The Choctawhatchee Bay offers a feeding area for both subadults and adults (FWS 1998, Fox *et al.* in press). Tagged subadults showed a preference for shoreline habitats which are predominated by sandy substrates, low salinity and water depths less than 3 m (10 ft) (FWS 1997, 1998; Parauka *et al.* in press). Most adult Gulf sturgeon were found in shallow water (2 to 4 m (6.6 to 13.1 ft)) with predominantly (greater than 80 percent) sandy sediment (Fox *et al.* in press). Ghost shrimp, a component of the sturgeon diet, are typically found in substrates ranging from sandy mud to organic silty sand (Felder and Lovett 1989), and their densities were greatest nearshore along the middle and eastern portions of the Choctawhatchee Bay (Heard *et al.* 2000), the area frequented by the Gulf sturgeon (Fox *et al.* in press). We include the deeper central portion of the Bay in Unit 12 as proposed critical habitat because the Gulf sturgeon are known to use the deeper bay waters for movement between the shoreline areas (Fox *et al.* in press).

Unit 13. Apalachicola Bay in Gulf and Franklin County, Florida

Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805(e–h)). The western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′N, 84°33.2′W. The lateral

extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

The Apalachicola River empties into Apalachicola Bay near Little Bay and Big Bay. The Apalachicola Bay system, a highly productive lagoon-and-barrier-island complex, encompasses 54,910 hectares (549 km^2) and consists of the bay proper, East Bay, St. George Sound, Indian Lagoon, and St. Vincent Sound (Wakeford 2001). It is relatively shallow, averaging 2 to 3 m (6.6 to 9.8 ft) in depth (Livingston 1983). The largest benthic habitat type found in Apalachicola Bay system is soft sediment, comprising approximately 70 percent of the estuarine area (Livingston 1984). Its composition of sand, clay, and silt varies considerably depending on the location in the bay. The Apalachicola Bay connects with the Gulf of Mexico through several passes, including Indian Pass, West Pass, East Pass, and Sike's cut, a man-made opening established in the mid 1950s (Odenkirk 1989).

Unit 13 provides winter feeding migration habitat for the Apalachicola River Gulf sturgeon subpopulation. Gulf sturgeon have been documented by sightings, incidental captures, and telemetry studies throughout Apalachicola Bay, East Bay, St. George Sound, St. Vincent Sound, and Indian Lagoon (Swift *et al.* 1977, Wooley and Crateau 1985, Odenkirk 1989, FWS 2000, F. Parauka pers. comm. 2002). Gulf sturgeon have also been documented in Indian Pass, West Pass, East Pass, and just north of Dog Island (Wooley and Crateau 1985, Odenkirk 1989, FWS 2000, F. Parauka pers. comm. 2002). Substantial weight gains and the presence of suitable habitat for prey items indicate that Gulf sturgeon are feeding while within these bodies of water (Wooley and Crateau 1985, Odenkirk 1989). These areas are also used for accessing adjacent marine and estuarine feeding areas proposed in Unit 11. Gulf sturgeon are believed to migrate from Apalachicola Bay into the Gulf of Mexico following prevailing currents and exiting primarily through the two most western passes (Indian and West) (Odenkirk 1989). No Gulf sturgeon have been documented using Sike's Cut, a man-made opening established in the 1950s bisecting Little St. George Island and St. George Island, therefore, Sike's Cut is excluded from our proposed designation.

Tag return data from incidental captures and recent relocation data document Gulf sturgeon south of the Apalachicola barrier islands, generally within a mile of the shoreline (Odenkirk 1989, FWS 2000). On June 8, 1992, a commercial shrimp fishermen provided anecdotal information that he and other shrimp fishermen, had caught hundreds of Gulf sturgeon, with estimated weights generally between 50 to 60 lbs (22.7 to 27.2 kg), in the same location, each spring (April, May and June), for the past thirty years (1962 to 1992) (F. Parauka pers. comm. 2002). The fishermen described the location as south of St. George Island, within a few hundred yards of the beach. He described the areas as adjacent to a shoal extending approximately 3.2 km (2 mi) offshore. Examination of bathymetric data shows that there are several shoals in that general vicinity. Since we are unable to confirm the specific location of the shoaled area described by this fisherman, we propose to extend this proposed critical habitat unit only 1 nm (1.9 km) offshore of the barrier islands bordering Apalachicola Bay and Cape San Blas, a distance for which we have supporting telemetry data. In doing so, we will still capture some of the shallow shoals extending south of the barrier islands in this area, which we believe provide important feeding substrate.

Unit 14. Suwannee Sound in Dixie and Levy Counties, Florida

Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′N, 83°12′W) to the Federal-State boundary at 29°17′N, 83°21′W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 29°11′N, 83°04′W) to the Federal-State boundary at 29°04′N, 83°15′W. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries and other rivers, creeks, or water bodies.

The Suwannee River system is unique among Gulf sturgeon river systems in that the river flows directly into the Suwannee Sound and Gulf of Mexico without any intervening barrier islands. Suwannee Sound is a shallow (typically less than 2 m (6.6 ft)), estuarine basin, a little less than 10 nm (8 km) long and a little over 4 nm (8 km) wide at its widest point. It is enclosed on its seaward side by Suwannee Reef, an approximately 14.6 nm (27 km) long arc of oyster reefs and shoals (Edwards *et al.* in prep.). The bathymetry of waters off the coastline and north and south of Suwannee Sound is different from the waters adjacent to other systems. Shallow waters are not confined to the nearshore environment, and depths less than 6 m (19.7 ft) extend 9 to 10 mi (14.5 to 16.1 km) off the coastline.

Telemetry tracking data confirm that subadult and adult Gulf sturgeon leave the river during October and November and enter Suwannee Sound and the nearshore Gulf of Mexico (Carr *et al.* 1996b, Edwards *et al.* in prep.). Tracked and relocated Gulf sturgeon move slowly and remained offshore of Suwannee Sound in nearby shallow (less than 6 m (19.7 ft)) marine/estuarine habitats for a period of two months, until at least mid or late December. Overall movement patterns are punctuated by periods of slow movement within small areas, suggesting feeding (Edwards *et al.* in prep.). Mason and Clugston (1993) found large, immigrating Suwannee River Gulf sturgeon fed on nearshore coastal shelf organisms lancelets (*Branchiostoma caribaeum*), brachiopods (*Glottida pyramida*), unidentified pelagic shrimps, polychaetes, unidentified marine molluscs, starfish and sea cucumbers. Carr *et al.* (1996b) found that adult Gulf sturgeon feed primarily on brachiopods and ghost shrimp, before entering the river. The consumption of brachiopods as a primary Gulf sturgeon food source is currently being researched by the University of Florida. Numerous underwater beds containing brachiopods have recently been located in the Suwannee River estuary and adjacent areas in Suwannee Sound (D. Murie and D. Parkyn pers. comm. 2002). Recent stomach content analyses using a non-lethal method of stomach pumping (lavaging) support that Gulf sturgeon from the Suwannee River subpopulation feed primarily on brachiopods, and to lesser amounts on ghost shrimp, amphipods, and worms prior to entering the river (D. Murie and D. Parkyn pers. comm. 2002).

Gulf sturgeon tracking and relocation data were used to delineate the boundaries of this proposed critical habitat unit. In 1998, 18 out of 19 sonic-tagged Gulf sturgeon were consistently relocated and found to be concentrated in a relatively small area (115 km^2 (44.4 mi^2)) offshore of Suwannee Sound (Edwards *et al.* in prep.). Specific locations within the concentration area were around Waldley Channel, West Gap, and Hedemon Reef. The farthest offshore area was Hedemon Reef, approximately 5 to 6 nm (9.3 to 11.1 km) from the Suwannee River opening. Previous telemetry relocation and tracking data collected in 1996 documented Gulf sturgeon using Gulf of Mexico waters as far out as 9 nm (16.7

km) (Sulak and Clugston 1999, Edwards *et al.* in prep.). More recently, on March 22, 2002, two Gulf sturgeon were observed jumping in the area of 29°14′N, 83°18′W, further substantiating the Gulf sturgeon's use of shallow State waters further offshore (> 6 nm (11.1 km) (Harris pers. comm. 2002). Benthic samples were taken where the fish were jumping and were comprised of fine sand substrate and lancelets. Although lancelets are recovered less frequently than brachiopods in the stomachs of Suwannee River Gulf sturgeon, this may be a result of quicker decomposition of lancelets during digestion compared to brachiopods. Our proposed designation, therefore, includes waters out to 9 nm (16.7 km) to encompass these areas that we believe are essential for recovery. The northern extent of the tracked sturgeon concentration area depicted in Edwards *et al.* (in prep.) corresponds approximately to the northern-most extremity of Big Pine Island. We, therefore, have chosen that easy-to-identify location for the northern limit of this proposed critical habitat unit. The southern extent of the concentration area depicted in Edwards *et al.* (in prep.) corresponds approximately to Richards Island. In addition to the telemetry data, Gulf sturgeon sightings are frequently reported around Deer Island and Derrick Key (F. Chapman, UF, pers. comm. 2002). Derrick Key is approximately 1 m (1.6 km) offshore of Richards Island. Based on these data, we propose the southernmost extremity of Richards Island for the southern limit of Unit 14.

Although Gulf sturgeon have been relocated both north and south of this proposed critical habitat area (Reynolds 1993, F. Chapman pers. comm. 2002, Edwards *et al.* in prep.), these records are relatively rare and spread out over approximately 643.7 km (400 mi) of coastline (from Charlotte Harbor to Apalachicola Bay). Because shallow waters believed to be used primarily by Gulf sturgeon are not confined to the nearshore environment, we have no way of estimating which other areas might be essential for feeding or movement. Gulf sturgeon may congregate in certain areas or diffuse throughout the entire area. Without additional information we cannot currently identify other areas to propose as critical habitat.

Land Ownership

Upon statehood in 1811 for Louisiana, 1817 for Mississippi, 1819 for Alabama, and 1845 for Florida, these States were granted ownership of lands beneath tidally influenced and navigable waters up to the high water mark (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). It is possible that prior sovereigns or the States have made grants to private parties which include lands below mean high waters of the navigable waters included within this rule. Thus, this rule may affect limited parcels of private land. However, we believe that the majority of lands proposed here as critical habitat are owned by the States of Louisiana, Mississippi, Alabama, and Florida. The majority of riparian lands bordering riverine critical habitat units are in private ownership. Table 3 summarizes public lands adjacent to designated critical habitat units.

TABLE 3.—PUBLIC LANDS ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS

Unit 1. Pearl—Lefleur's Bluff SP, Pearl River WMA, Bogue Chitto NWR, Old River WMA, National Space Technology Laboratories (National Aeronautics and Space Administration (NASA))
Unit 2. Pascagoula—Desoto NF, Pascagoula River WMA, Ward Bayou WMA, MS Sandhill Crane NWR.
Unit 3. Escambia—Lower Escambia River WtrMA, Conecuh NF.
Unit 4. Yellow—Yellow River WtrMA, Eglin Air Force Base, Conecuh NF, Blue Spring WMA, Blackwater River Recreational Area.
Unit 5. Choctawhatchee—Choctawhatchee River SF, Choctawhatchee River Delta Preserve, Choctawhatchee River WtrMA.
Unit 6. Apalachicola—Chattahoochee Nature Park, Torreya SP, Apalachicola Bluffs and Ravines Preserve, Apalachicola WMA, Apalachicola River WtrMA, Apalachicola NF, Apalachicola National Estuarine Research Reserve.
Unit 7. Suwannee—Ft. Union CA, Holton Creek CA, Suwannee River SP CA, Twin Rivers SF, Madison Co. CA, Anderson Spring CA, Charles Spring CA, Allen Mill Pond CA, Peacock Spring CA, Little River CA, Troy Springs CA, Grady CA, Stuart Landing CA, Hatchbend CA, Rock Bluff CA, Log Landing CA, Wannee CA, Fanning Springs SRA, Andrews WMA, Manatee Springs SP, Fowler's Bluff CA, Cummer Sanctuary, Lower Suwannee NWR, Troy Springs SP, Convict Spring CA, Yellow Jacket CA, Suwannee River SP, Big Shoals SP, Big Shoals CA, Camp Branch CA, Deep Creek CA, Stephen Foster State Folk Culture Center, Suwannee Valley CA, Swift Creek CA, Woods Ferry CA.
Unit 8. Lake Borgne, Mississippi Sound, Lake Pontchartrain—Biloxi Marshland Corporation WMA, Bayou Sauvage NWR, Big Branch Marsh NWR, Grand Bay NWR, Gulf Islands NS, Buccaneer SP, St. Hospital WMA, Fontainebleau SP, St. Tammany SWR, Pearl River WMA, Fort Pike State Historic Site.
Unit 9. Pensacola Bay—Gulf Islands NS, Eglin AFB, Pensacola Naval Air Station, Garcon Point WMD, Yellow River WtMR, Lower Escambia River Mgt. Area, Bay Bluffs Park, Escambia Bay Bluffs, Fort Pickens AP, Yellow River Marsh AP.
Unit 10. Santa Rosa Sound—Gulf Islands NS, Eglin AFB.
Unit 11. Near Shore GOM—Gulf Islands NS, Eglin AFB (main base and Cape San Blas), St. Vincent NWR, St. Joe SP, Salina Park, Tyndall AFB, St. Andrew SP, Camp Helen SRA, Deer Lake SP, Grayton SRA, Topsail Hill St. Preserve, Henderson SRA, Pensacola Naval Air Station, Perdido Key SRA, Fort Pickens AP, St. Andrew Bay AP, St. Joseph Bay AP.
Unit 12. Choctawhatchee Bay—Choctawhatchee River Delta Preserve, Rocky Bayou State Recreation SRA, Eglin AFB, Basin Bayou Recreation Area.
Unit 13. Apalachicola Bay—St. Vincent NWR, St. George Island SP, Apalachicola WMA, Apalachicola National Estuarine Research Reserve, Apalachicola Bay AP.
Unit 14. Suwannee Sound—Lower Suwannee NWR, Cedar Keys NWR, Big Bend Seagrasses AP.

*Abbreviations—AFB=Air Force Base, AP=Aquatic Preserve, CA=Conservation Area, NF=National Forest, NS=National Seashore, NWR=National Wildlife Refuge, SCA=State Commemorative Area, SF=State Forest, SP=State Park, SRA=State Recreation Area, SWR=State Wildlife Refuge, WMA=Wildlife Management Area, WMD=Water Management District, WtrMA=Water Management Area.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the

destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.,* the primary constituent elements, that were the basis for determining the habitat to be critical.

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434) regarding our previous not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. The regulations for interagency cooperation regarding proposed critical habitat are codified at 50 CFR 402.10. During a conference on the effects of a Federal action on proposed critical habitat, we make non-binding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved.

If requested by the Federal agency and deemed appropriate by us, the conference may be conducted in accordance with the procedures for formal consultation under 50 CFR 402.14. We may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under ''Conference for Proposed Critical Habitat.'' Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Gulf Sturgeon Critical Habitat

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a federal agency, may destroy or adversely modify critical habitat for the Gulf sturgeon include, but are not limited to:

(1) Actions that would appreciably reduce the abundance of riverine prey for larval and juvenile sturgeon, or of estuarine and marine prey for juvenile and adult Gulf sturgeon, within a designated critical habitat unit, such as dredging; dredged material disposal; channelization; in-stream mining; and land uses that cause excessive turbidity or sedimentation.

(2) Actions that would appreciably reduce the suitability of Gulf sturgeon spawning sites for egg deposition and development within a designated critical habitat unit, such as impoundment; hard-bottom removal for navigation channel deepening; dredged material disposal; in-stream mining; and land uses that cause excessive sedimentation.

(3) Actions that would alter the flow regime (the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) of a riverine critical habitat unit such that it is appreciably impaired for the purposes of Gulf sturgeon migration, resting, staging, breeding site selection, courtship, egg fertilization, egg deposition, and egg development, such as impoundment; water diversion; and dam operations.

(4) Actions that would alter water quality within a designated critical habitat unit, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredging; dredged material disposal; channelization; impoundment; in-stream mining; water diversion; dam operations; land uses that cause excessive turbidity; and release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater via point sources or dispersed non-point sources.

(5) Actions that would alter sediment quality within a designated critical habitat unit such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredged material disposal; channelization; impoundment; in-stream mining; land uses that cause excessive sedimentation; and release of chemical or biological pollutants that accumulate in sediments.

(6) Actions that would obstruct migratory pathways within and between adjacent riverine, estuarine, and marine

critical habitat units, such as dams, dredging, point-source-pollutant discharges, and other physical or chemical alterations of channels and passes that restrict Gulf sturgeon movement.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Gulf sturgeon and its habitat have preceded this critical habitat proposal. The action agencies have included the U.S. Army Corps of Engineers (COE), other Department of Defense (DOD) agencies, the U.S. Coast Guard, the National Park Service, the Federal Highway Administration, the Minerals Management Service (MMS), the Federal Energy Regulatory Commission, and others. We have also conducted intra-service section 7 consultations on our own actions.

Since listing, the FWS has conducted 320 informal and 14 formal consultations, and NMFS has conducted 70 informal and 4 formal consultations involving Gulf sturgeon. The informal consultations, all of which concluded with a finding that the Federal action would not affect or would not likely adversely affect the Gulf sturgeon, addressed a wide range of actions including navigation, beach nourishment, Gulf of Mexico fishery management planning, oil and gas leases, power plants, bridges, pipelines, breakwaters, rip-rap, levees and other flood-protection structures, piers, bulkheads, jetties, military actions, and in-stream gravel mining. The formal consultations, which followed a finding that the Federal action may affect Gulf sturgeon, have dealt exclusively with navigation projects, oil and gas leases, pipelines, review of water quality standards, and disaster recovery activities, and have resulted in biological opinions. Also, the Gulf sturgeon was addressed in several biological opinions that were triggered by may-affect determinations for other listed species. To date, none of the Services' opinions has concluded that a proposed Federal action would jeopardize the continued existence of the Gulf sturgeon.

Previous biological opinions for the Gulf sturgeon have included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions for the Gulf sturgeon also have included non-discretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of Gulf sturgeon. Section 3(18) of the Act defines the term take as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.'' Harm is further defined in our regulations (50 CFR 7.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

The conservation recommendations and reasonable and prudent measures provided in previous Gulf sturgeon biological opinions have included enforcement of marine debris and trash regulations; avoidance of dredging and disposal in deeper portions of the channel; monitoring and reporting of ''take'' events during project construction; operation of equipment so as to avoid or minimize take; monitoring of post-project habitat conditions; monitoring of project-area Gulf sturgeon subpopulations; limiting of dredging to the minimum dimensions necessary; limiting of the depth of dredged material placed in disposal areas; arrangement of the sequence of areas for dredging to minimize potential harm; screening of intake structures; avoidance of riverine dredging during spawning months; limiting of tow times of trawl nets for hurricane debris cleanup; addition of specific measures for species protection to oil spill contingency plans; and funding of research useful for Gulf sturgeon conservation.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded or carried out by Federal agencies.

While preparing this proposal, the FWS and the COE met several times to discuss and review riverine and estuarine navigation channel maintenance dredging requirements, formal and informal consultation procedures, and the biology of the Gulf sturgeon. During these consultations, the agencies agreed to conduct a formal programmatic consultation on channel maintenance activities in riverine and estuarine navigation channels occupied by the Gulf sturgeon. A programmatic consultation will consider overall effects of the project to the survival and recovery of the sturgeon, as well as other listed species, and identify reasonable and prudent measures to minimize incidental take of the sturgeon without altering the basic design, location, scope, duration, or timing of the projects. The COE is in the process of developing a biological assessment that will initiate the formal consultation process. If the biological assessment is completed before a final rule is published, potential effects to critical habitat will be considered under the conference process. All formal consultations concluded ''no jeopardy'' for the Gulf sturgeon.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Services' offices:

Alabama—Daphne, FWS Ecological Services Office (334/441–5181)
Florida—Panama City, FWS Ecological Services Office (850/769–0552)
Jacksonville, FWS Ecological Services Office (904/232–2580)
Louisiana—Lafayette, FWS Ecological Services Office (337/291–3100)
Mississippi—Jackson, FWS Ecological Services Office (601/965–4900)
NMFS—St. Petersburg, Florida, NMFS Regional Office (727/570–5312)

Jurisdictional Responsibilities for the Management of the Gulf Sturgeon

When the Gulf sturgeon was listed on September 30, 1991 (56 FR 49653), the Services had not resolved jurisdictional responsibilities for the management of the Gulf sturgeon. Both Services signed the listing rule in agreement that the species required protection. The final listing rule stated that until the jurisdictional issue was resolved, the FWS would be responsible for the species once the listing became effective. Although the issue has never been formally resolved, we have been operating under a verbal agreement in which the FWS maintains the lead for recovery actions. Consultation responsibilities were divided, with the FWS performing consultation review for projects impacting the Gulf sturgeon in the riverine and estuarine habitats, and NMFS performing consultation review for projects affecting the species in marine habitats.

We intend to formalize Gulf sturgeon jurisdictional responsibilities within the final critical habitat rule. In order to enhance consultation coordination efficiency for the action agencies, we propose the following structure. The FWS will maintain primary responsibility for recovery actions and the NMFS will assist in and continue to fund recovery actions pertaining to

estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the Coast Guard, and the Federal Emergency Management Agency. The NMFS will consult with the DOD, COE, MMS, and any other Federal agencies not mentioned here explicitly. In marine units, the NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS, but with NMFS assistance where needed. Each agency will conduct its own intra-agency consultations as necessary. We would like your comments on this proposal.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. That economic analysis will be conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**. Comments will be accepted on the draft economic rule for a minimum of 30 days, during which the comment period on this rule will remain open.

Public Comments Solicited

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

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and distribution of Gulf sturgeon and what habitat is essential to the conservation of this species and why;

(3) Whether areas within proposed critical habitat are currently being managed to address conservation needs of the Gulf sturgeon;

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities;

(6) Economic and other values associated with designating critical habitat for the Gulf sturgeon, such as those derived from non-consumptive uses (*e.g.,* hiking, camping, wildlife-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the FWS Ecological Services Office in Panama City Field Office (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Services are preparing a draft economic analysis of this proposed action. The Services will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of

specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of Gulf sturgeon. This analysis will be available for public comment before finalizing this designation. In addition, NMFS will use this analysis to meet the requirements of and make determinations under the Regulatory Flexibility Act, the Unfunded Mandates Reform Act and Executive Order 12866. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The following discussion of the potential economic impact of this proposed rule reflects the conclusions of the FWS, only. This discussion is based upon the information regarding potential economic impact that is available to the FWS at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the FWS on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A ''substantial number'' of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. The FWS is hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, the FWS considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, the FWS considered the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, *etc.*). The FWS applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, the FWS also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with the Services under section 7 of the Act on activities that they fund, permit, or implement that may affect the Gulf sturgeon. If this critical habitat designation is finalized, Federal agencies must also consult with the Services if their activities may affect designated critical habitat. However, the FWS believes this will result in minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since the Gulf sturgeon was listed (1991), the FWS has conducted 320 informal and 14 formal consultations, and the NMFS has conducted 70 informal and 4 formal consultations involving this species. Most of these consultations involved Federal projects or permits to businesses that do not meet the definition of a small entity (*e.g.,* federally sponsored projects, MMS lease sales). Also, a number of COE permit actions involved other large public entities (*e.g.,* cities with populations greater than 50,000, counties, and State-sponsored activities) that also do not meet the definition of a small entity. No formal consultations involved a non-Federal entity. However, about 40 informal consultations were on behalf of a private business. Most of these informal consultations were energy-related (*e.g.,* gas transmission lines, platform construction and removal, intake structures), some being proposed by small entities. There were also several piers, docks, bridges, and high-speed marine races proposed by small entities and authorized by either the COE or the Coast Guard. The FWS does not believe that the number of energy-related small entities; or small entities constructing docks, piers, and bridges; or high-speed marine-race small entities meets the definition of substantial described above.

The vast majority of critical habitat being proposed, with few exceptions, is public land involving river, stream, estuary, or marine habitat that is also regulated under the Clean Water Act, the Rivers and Harbors Act of 1899, and/or various Coast Guard authorities. Small entity economic activities that may require Federal authorization or permits include energy-related activities such as pipelines, harbors, and platforms; residential development including docks, piers, bridges, and shoreline protection; boating-related projects of small communities; private port operation including maintenance dredging and docks; small water supply or hydropower projects; and high speed marine events. However, the FWS is not aware of a significant number of future activities that would require Federal

permitting or authorization in these coastal and river areas. Historically, there has been less than two informal consultations per State per year involving both large and small private entities. The FWS is not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations. Therefore, the FWS concludes that the proposed rule would not affect a substantial number of small entities.

In summary, the FWS has considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. The FWS has concluded that it would not affect a substantial number of small entities. There would be no additional section 7 consultations resulting from this rule as all proposed critical habitat is currently occupied by the Gulf sturgeon so the consultation requirement has already been triggered. These consultations are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, the FWS is certifying that the proposed designation of critical habitat for the Gulf sturgeon will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after completion of our economic analysis and revised, if necessary, in the final rule.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) the agencies will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Since the proposed critical habitat includes only aquatic areas that are generally held in public trust, we believe that little or no private property is included in the proposed designation. Based on current public knowledge of the species protection and the prohibition against take of the species both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of both the listing and the proposal to designate critical habitat with, appropriate State resource agencies in Louisiana, Mississippi, Alabama, and Florida. The designation of critical habitat for the Gulf sturgeon imposes no restrictions in addition to those currently in place, and, therefore, has little additional impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Gulf sturgeon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with ESA permits are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, Forms 3–200–55 and 3–200–56, with an expiration date of July 31, 2004. Detailed information for ESA documentation appears at 50 CFR 17. 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 (NEPA)

The FWS has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Act. The FWS published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). NMFS has determined that this action is categorically excluded from NEPA requirements.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Gulf sturgeon. Therefore, designation of critical habitat for the Gulf sturgeon has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Panama City Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Patty Kelly, FWS, (850/769–0552,

extension 228), and Jennifer Lee, NMFS, (727/570–5312) (see **ADDRESSES** section).

List of Subjects

50 CFR Part 17

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

50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, and part 226, subchapter C of chapter II, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for the ''Sturgeon, Gulf'' under ''FISHES'' in the List of Endangered and Threatened Wildlife 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							
*	*	*	*	*	*		*
Sturgeon, Gulf	*Acipenset oxyrinchus* (=*oxyrhynchus*) *desotoi*.	U.S.A. (AL, FL, GA, LA, MS).	Entire	T	444	17.95(e)	17.44(v)
*	*	*	*	*	*		*

3. Amend § 17.95(e) by adding critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

Gulf Sturgeon (*Acipenser oxyrinchus desotoi*)

(1) Critical habitat units are depicted for Louisiana, Mississippi, Alabama, and Florida on the maps below.

(2) The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(i) Abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats for juvenile, subadult, and adult life stages;

(ii) Riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay;

(iii) A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of freshwater discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, eggs sheltering, resting, and larvae staging;

(iv) Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(v) Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and

(vi) Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats.

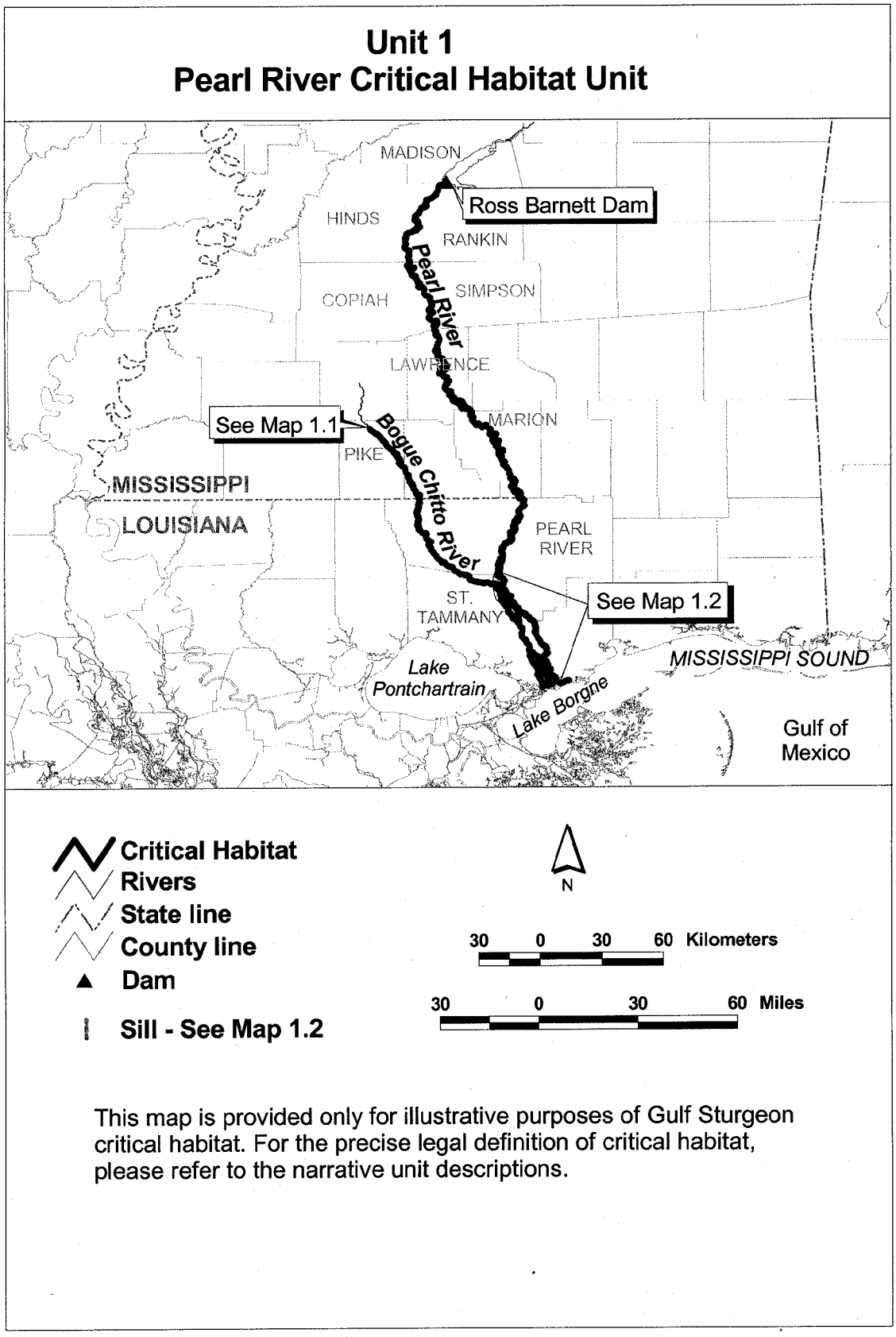
(3) The textual unit descriptions below are the definitive source for determining the critical habitat boundaries. General location maps by unit are provided at the end of each unit description and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(4) *Unit 1:* Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi.

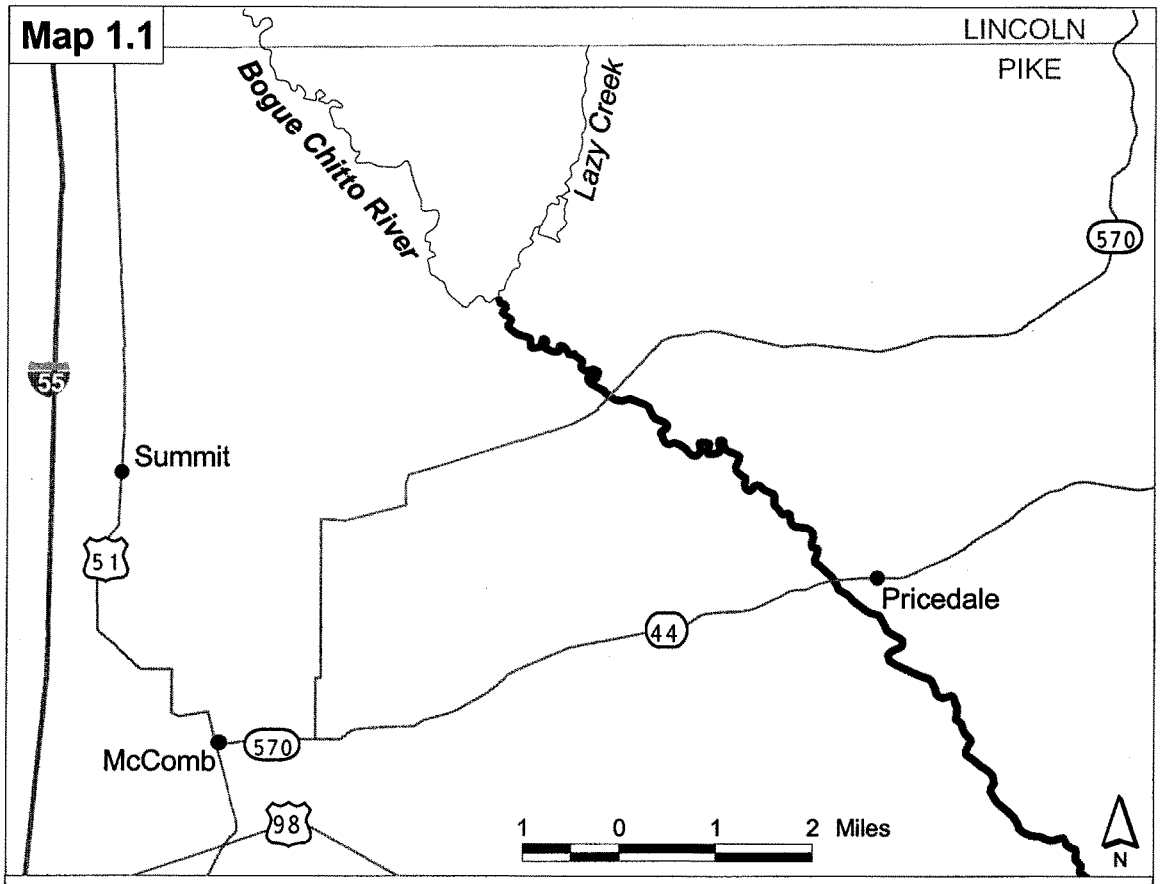
(i) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from its confluence with Lazy Creek just upstream of its crossing with Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(ii) Maps of Unit 1 follow:

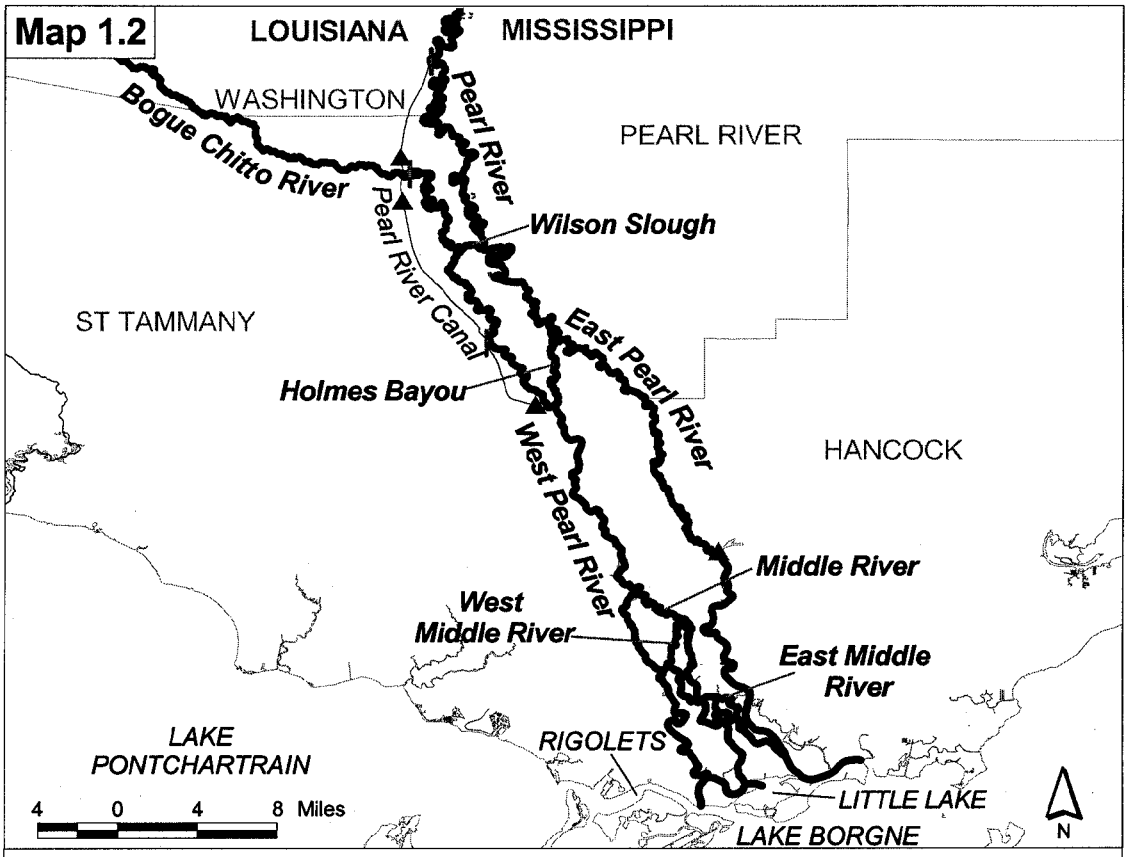
BILLING CODE 4310–55–P



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

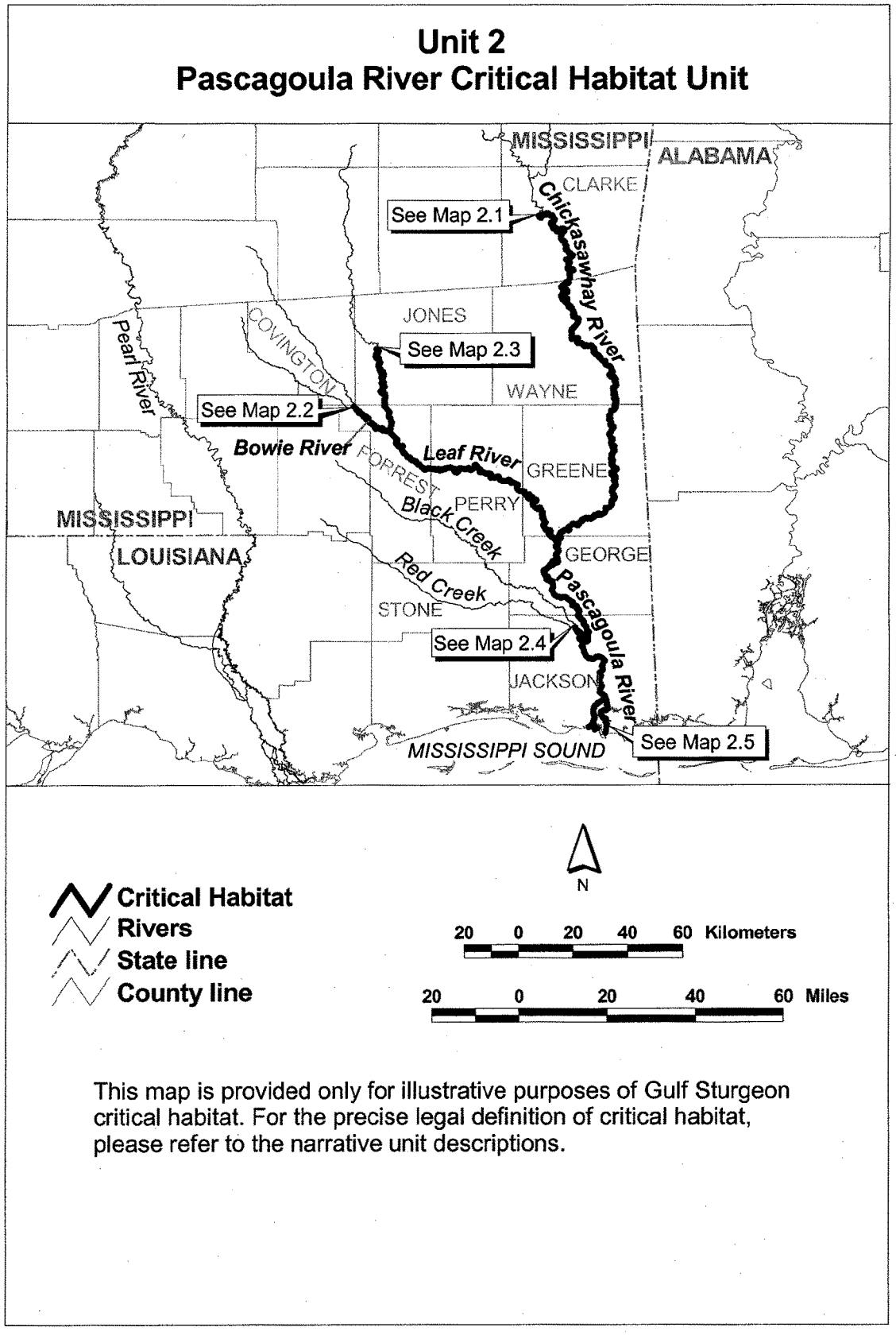
BILLING CODE 4310–55–C

(5) *Unit 2:* Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi.

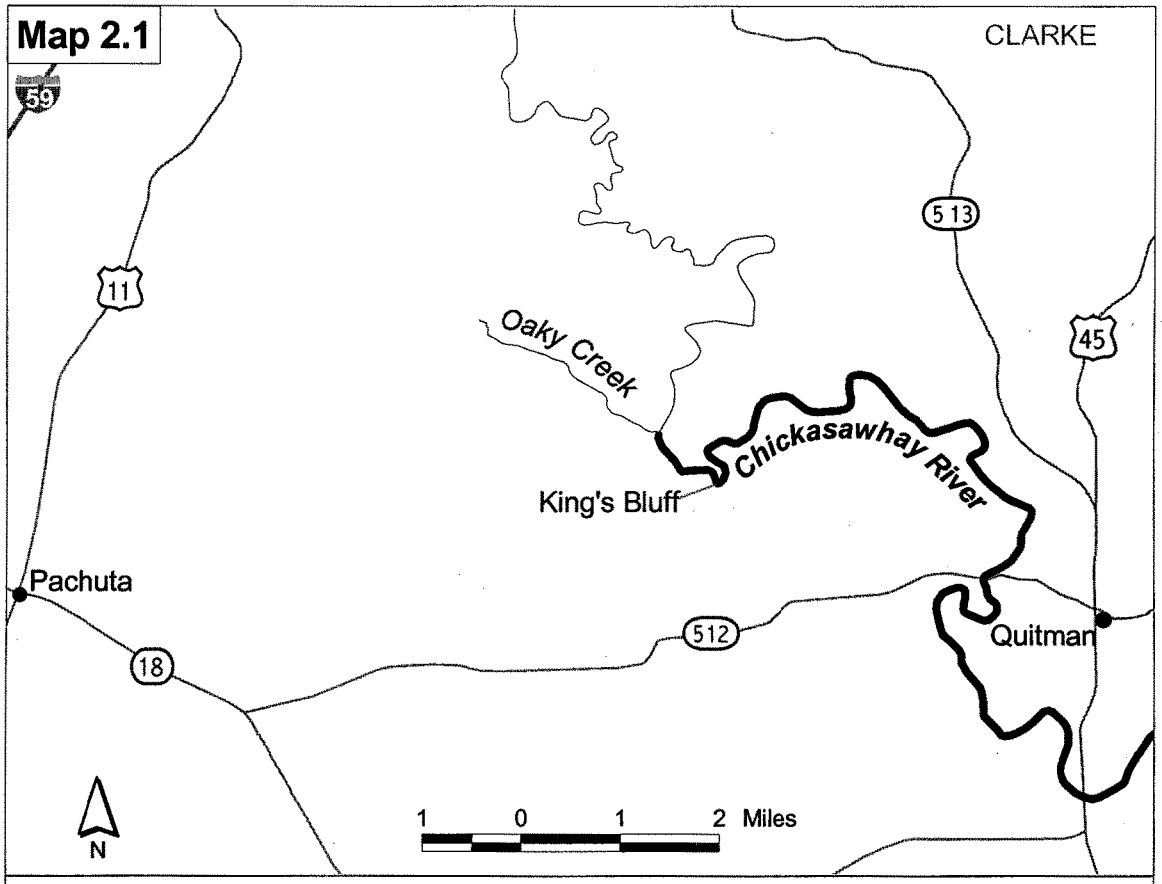
(i) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bowie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bowie River main stem beginning at its confluence with Bowie Creek and Okatoma Creek, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.

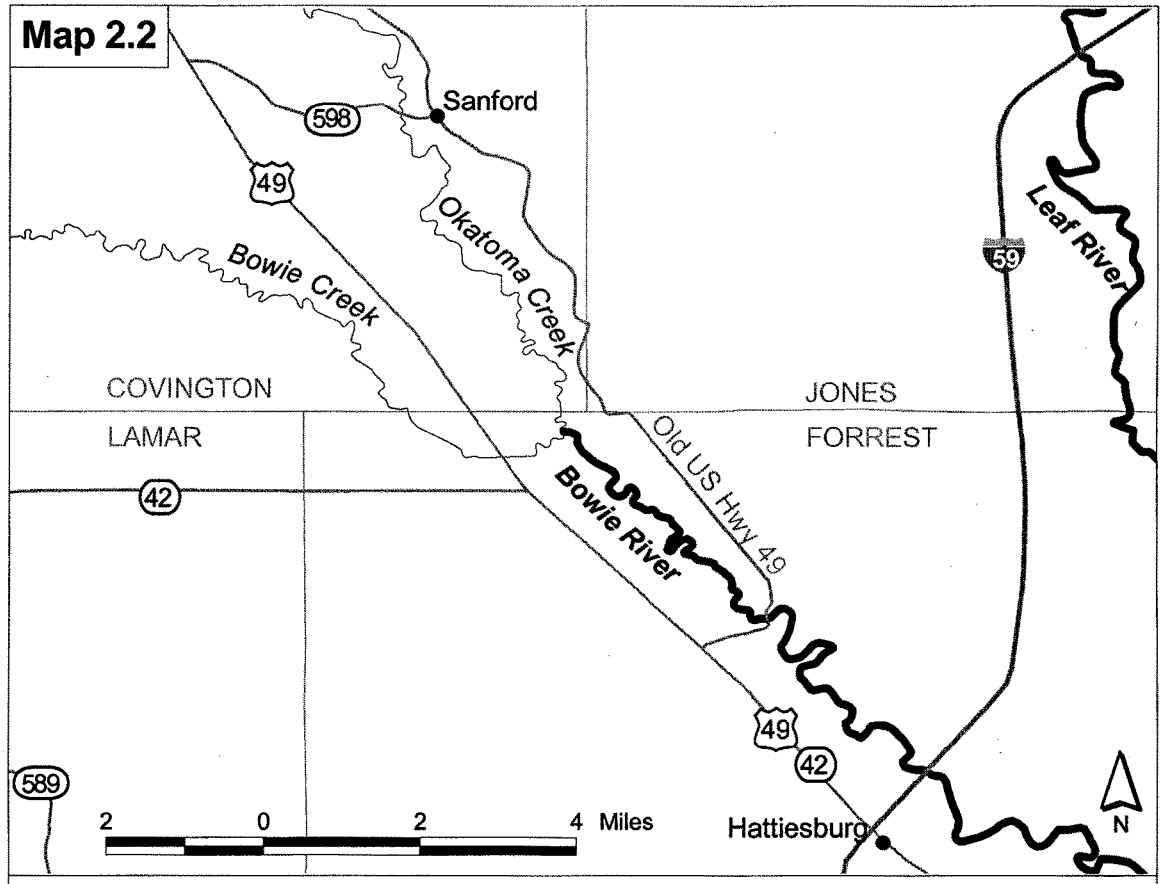
(ii) Maps of Unit 2 follow:

BILLING CODE 4310–55–P

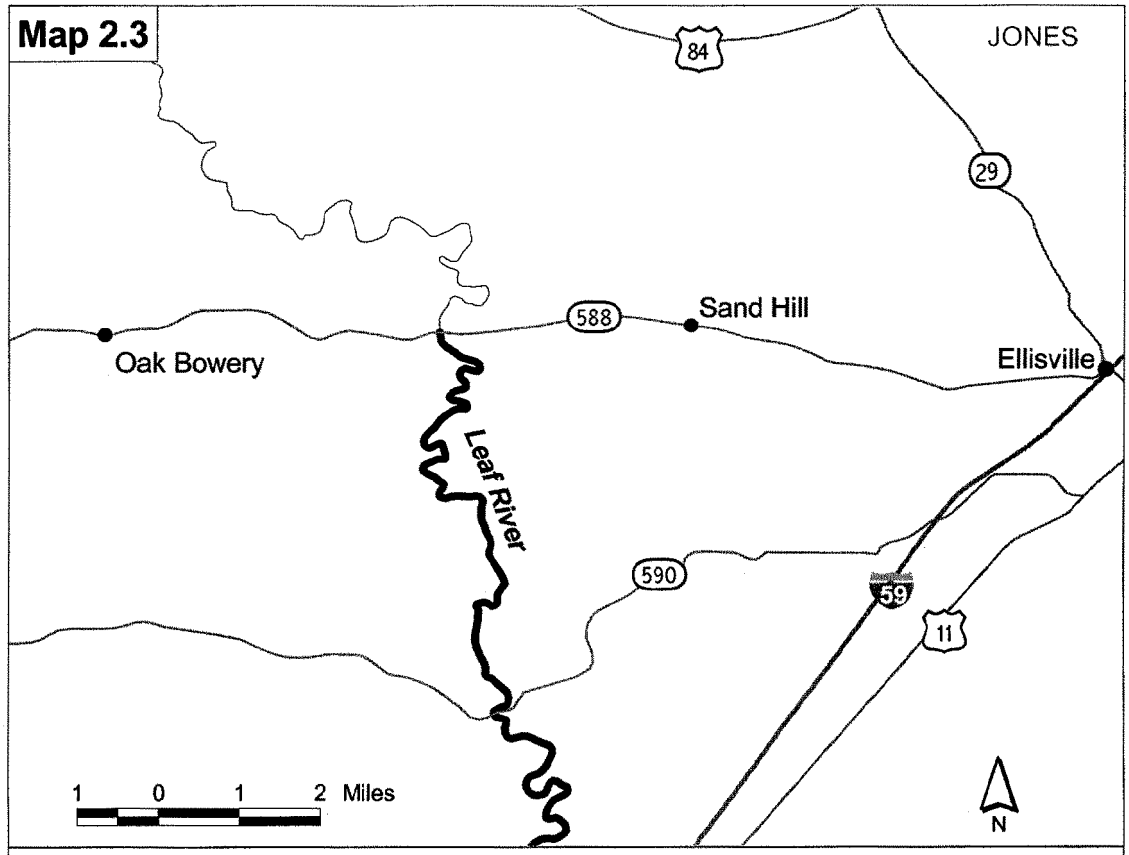


This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

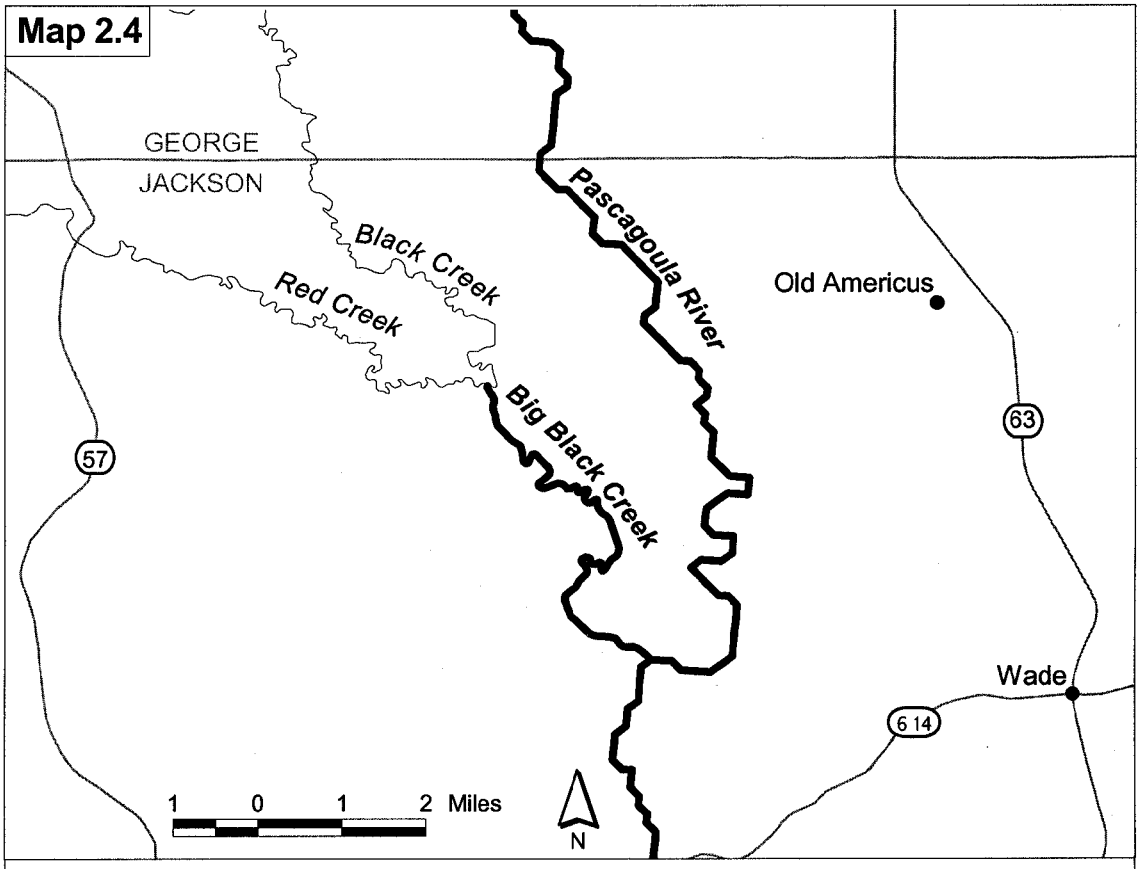

Map 2.1
CLARKE
59
11
513
45
Oaky Creek
Chickasawhay River
King's Bluff
Pachuta
512
18
Quitman
N
1 0 1 2 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



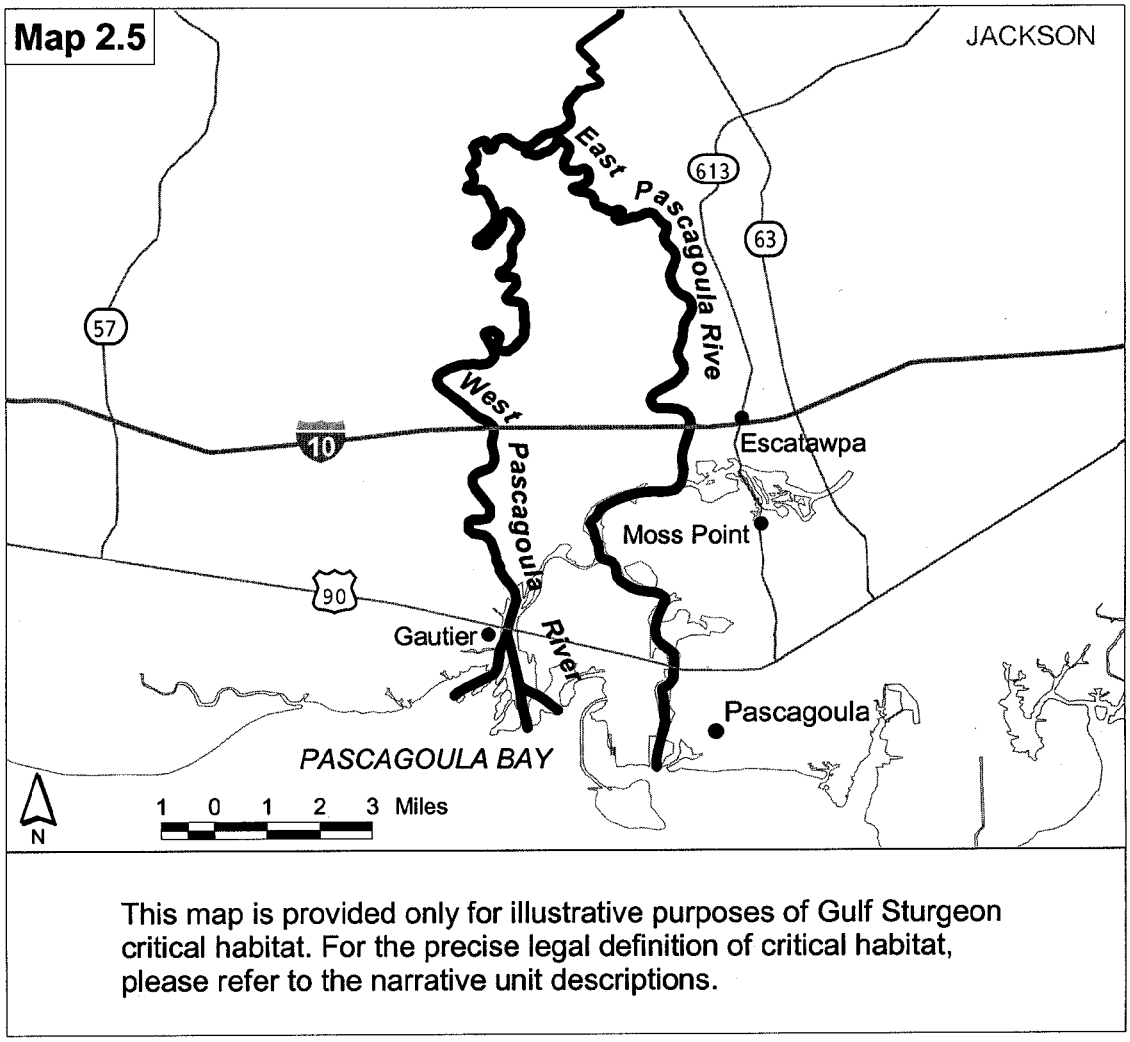
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



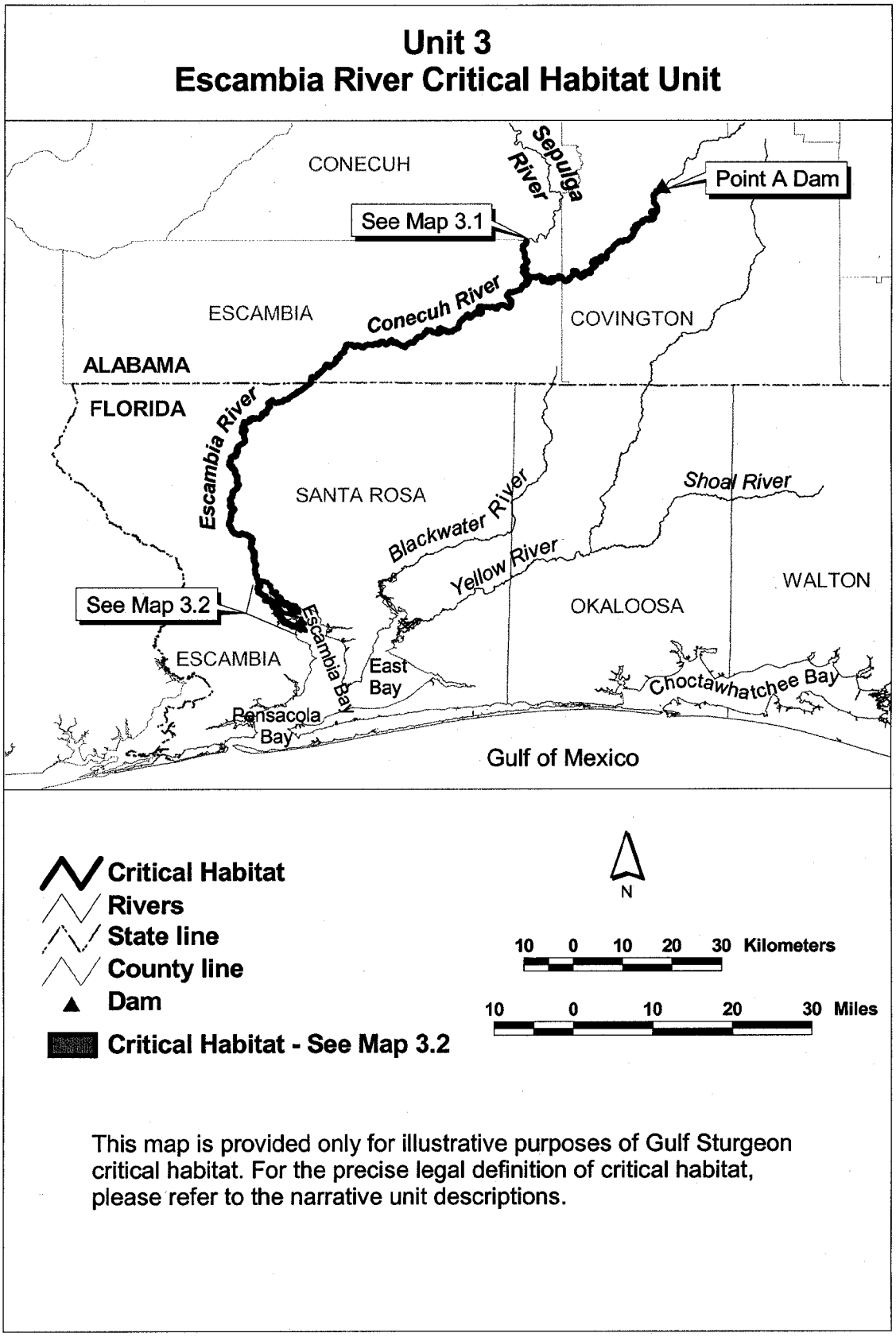
BILLING CODE 4310–55–C

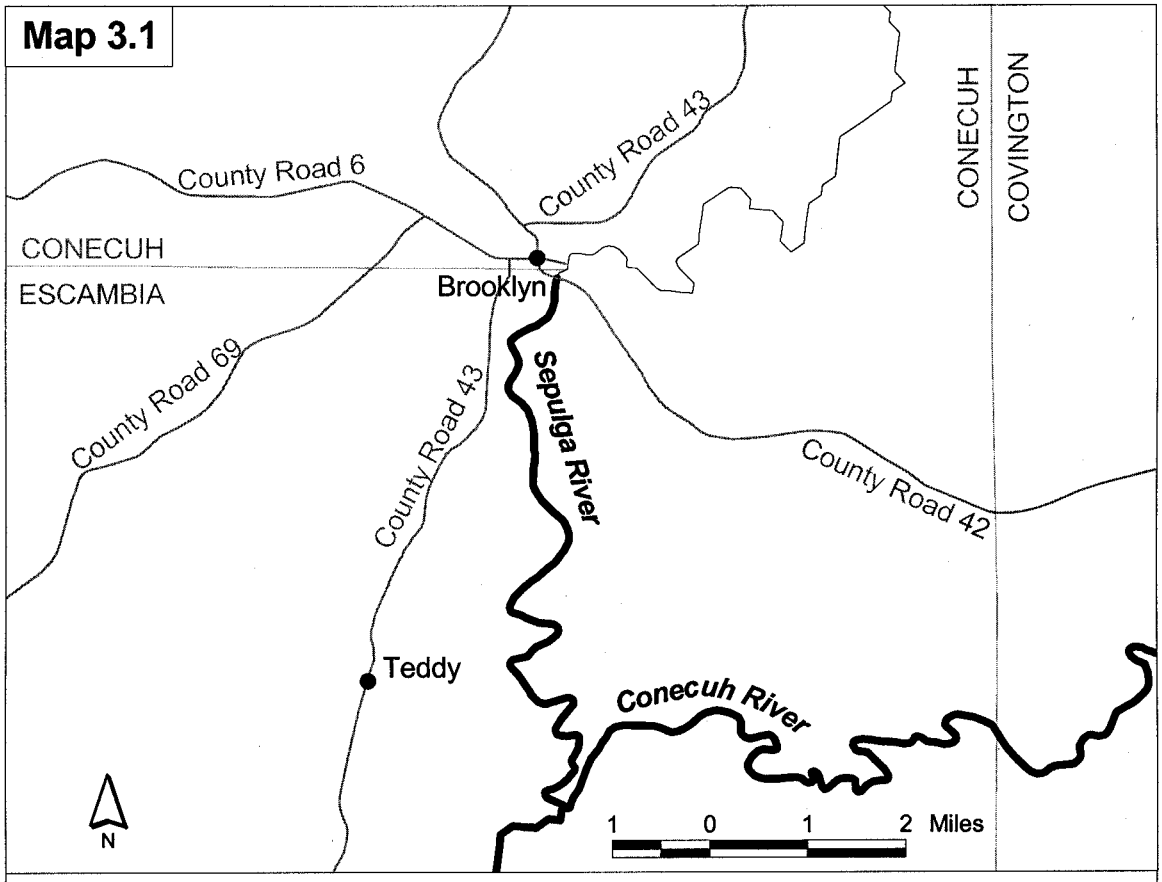
(6) *Unit 3:* Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama.

(i) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

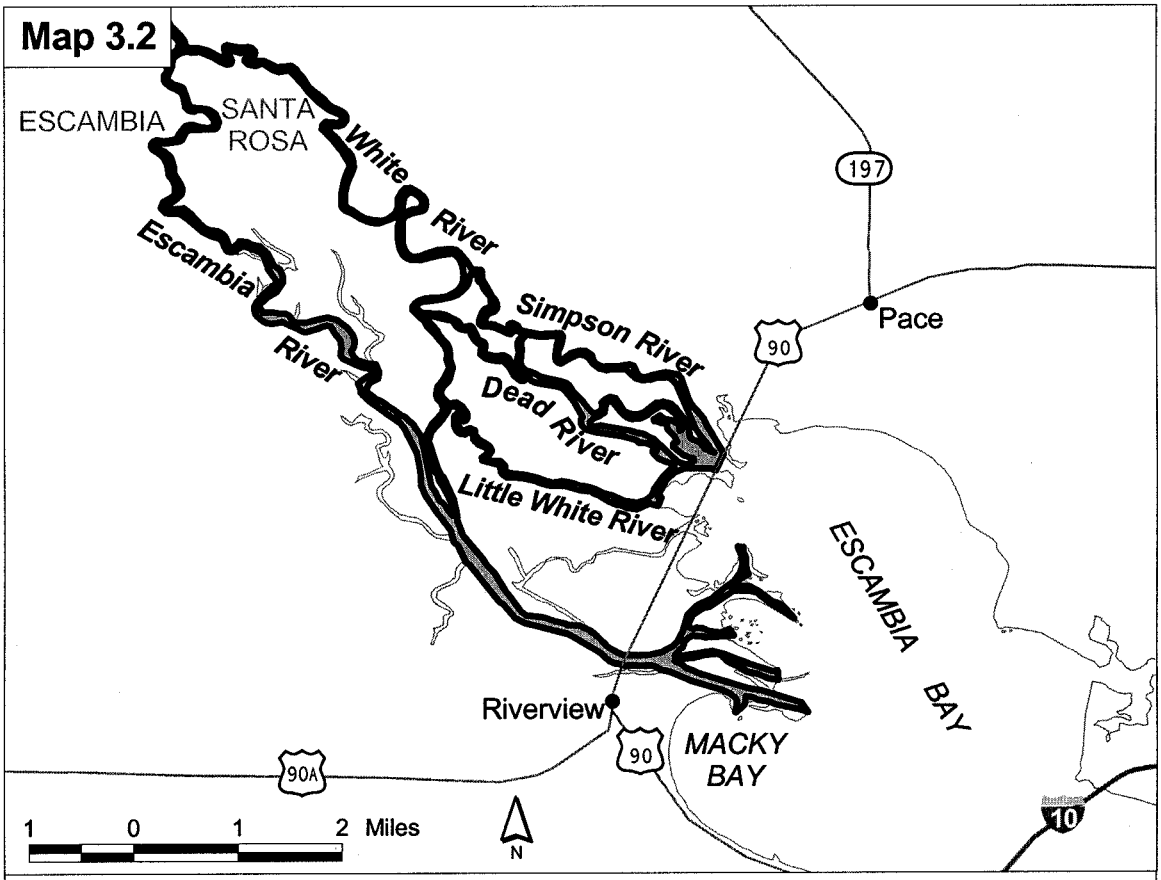
(ii) Maps of Unit 3 follow:

BILLING CODE 4310–55–P


Unit 3
Escambia River Critical Habitat Unit
CONECUH
Sepulga River
Point A Dam
See Map 3.1
ESCAMBIA
Conecuh River
COVINGTON
ALABAMA
FLORIDA
Escambia River
SANTA ROSA
Blackwater River
Shoal River
Yellow River
WALTON
See Map 3.2
OKALOOSA
ESCAMBIA
Escambia Bay
East Bay
Choctawhatchee Bay
Pensacola Bay
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Map 3.2
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

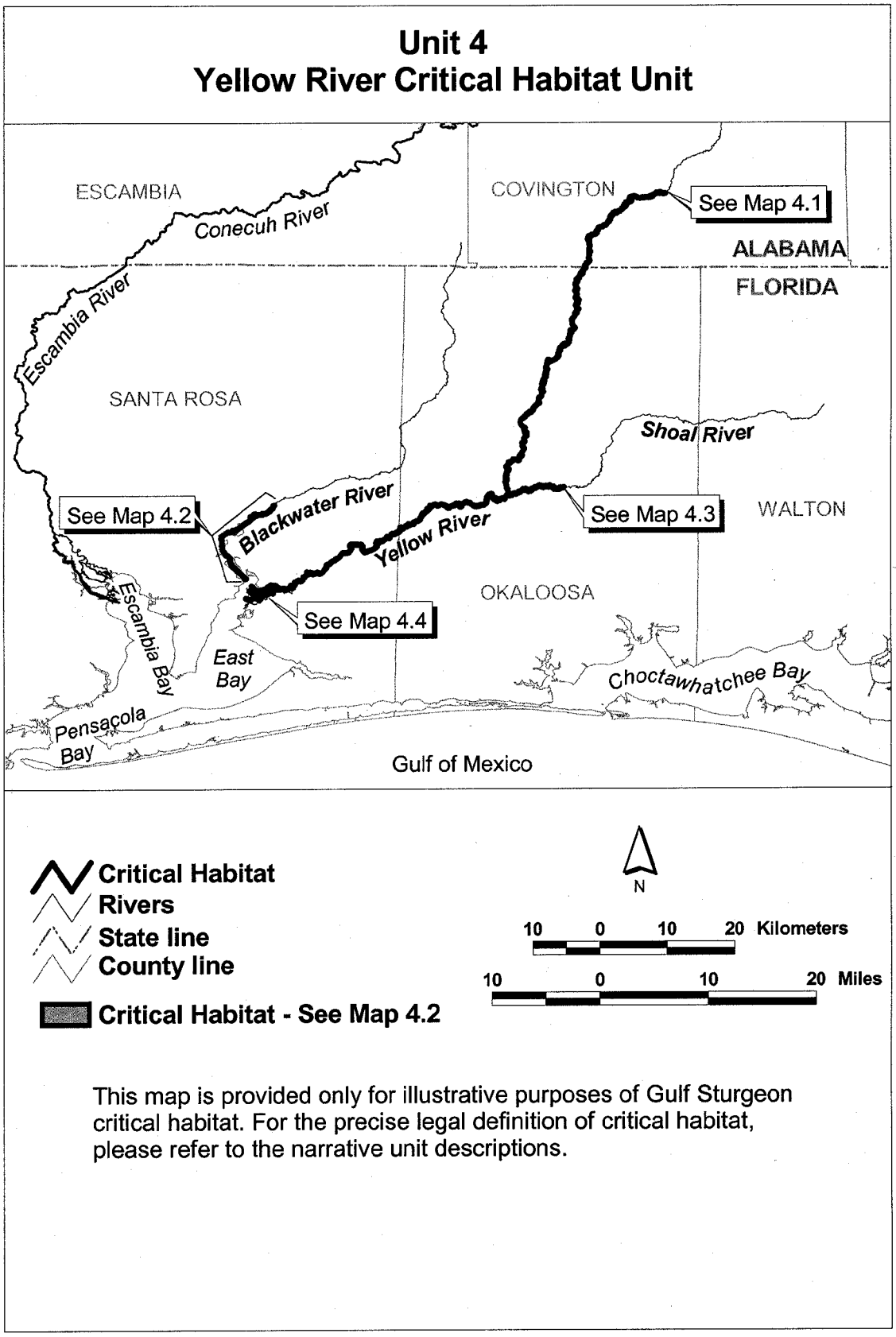
BILLING CODE 4310–55–C

(7) *Unit 4:* Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama.

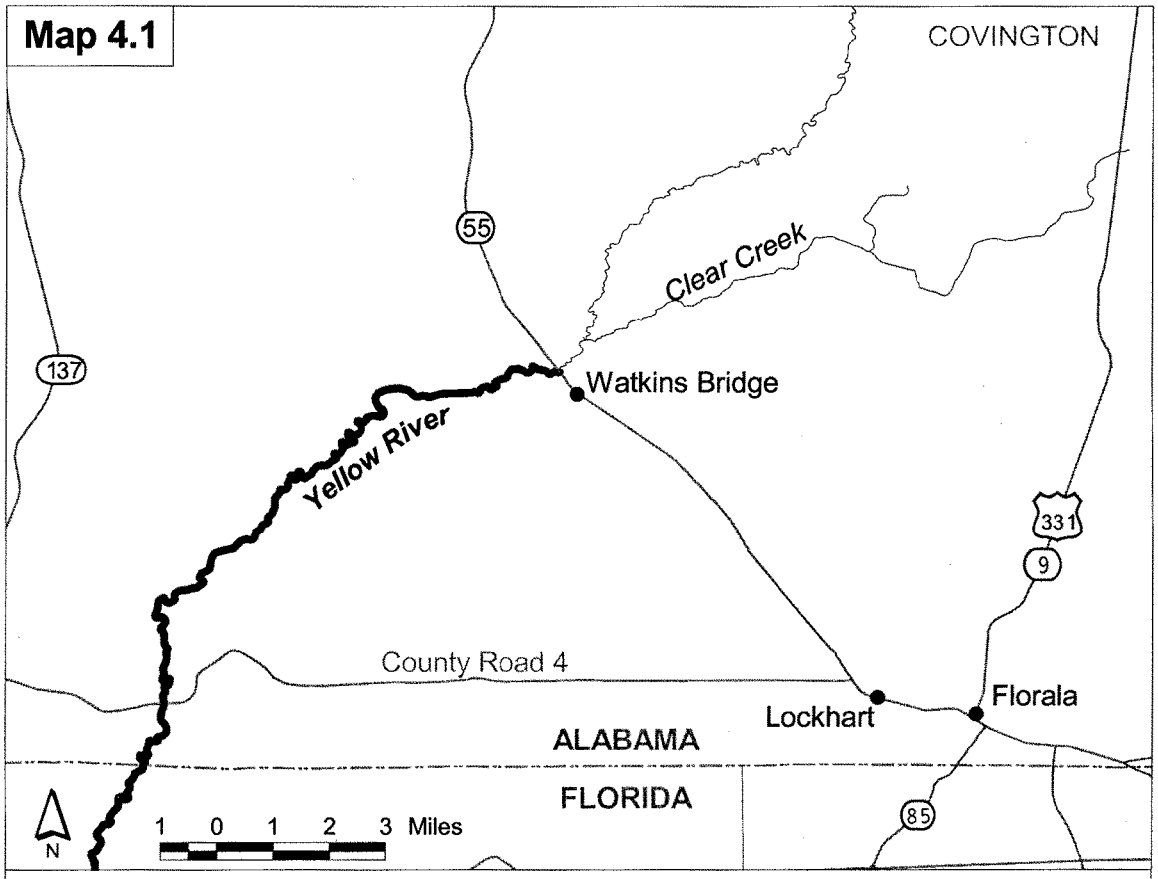
(i) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(ii) Maps of Unit 4 follow:

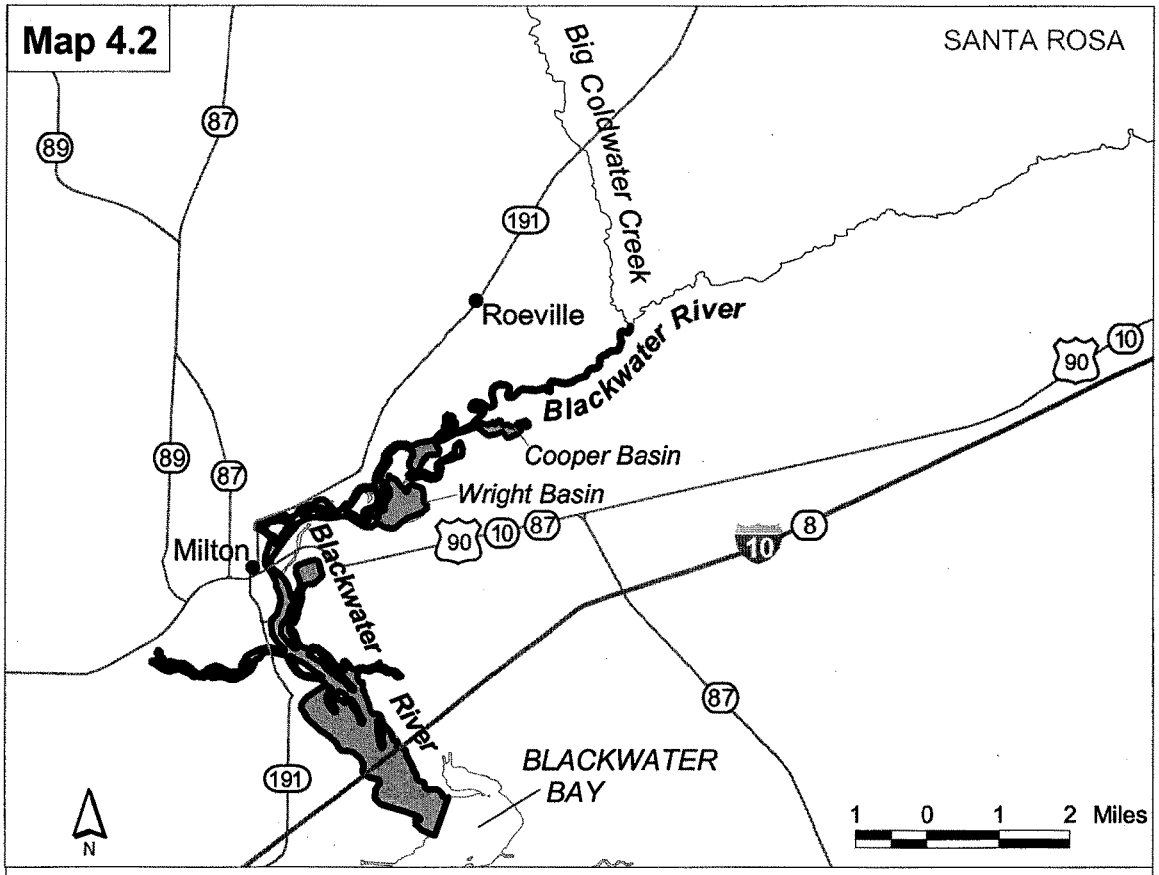
BILLING CODE 4310–55–P



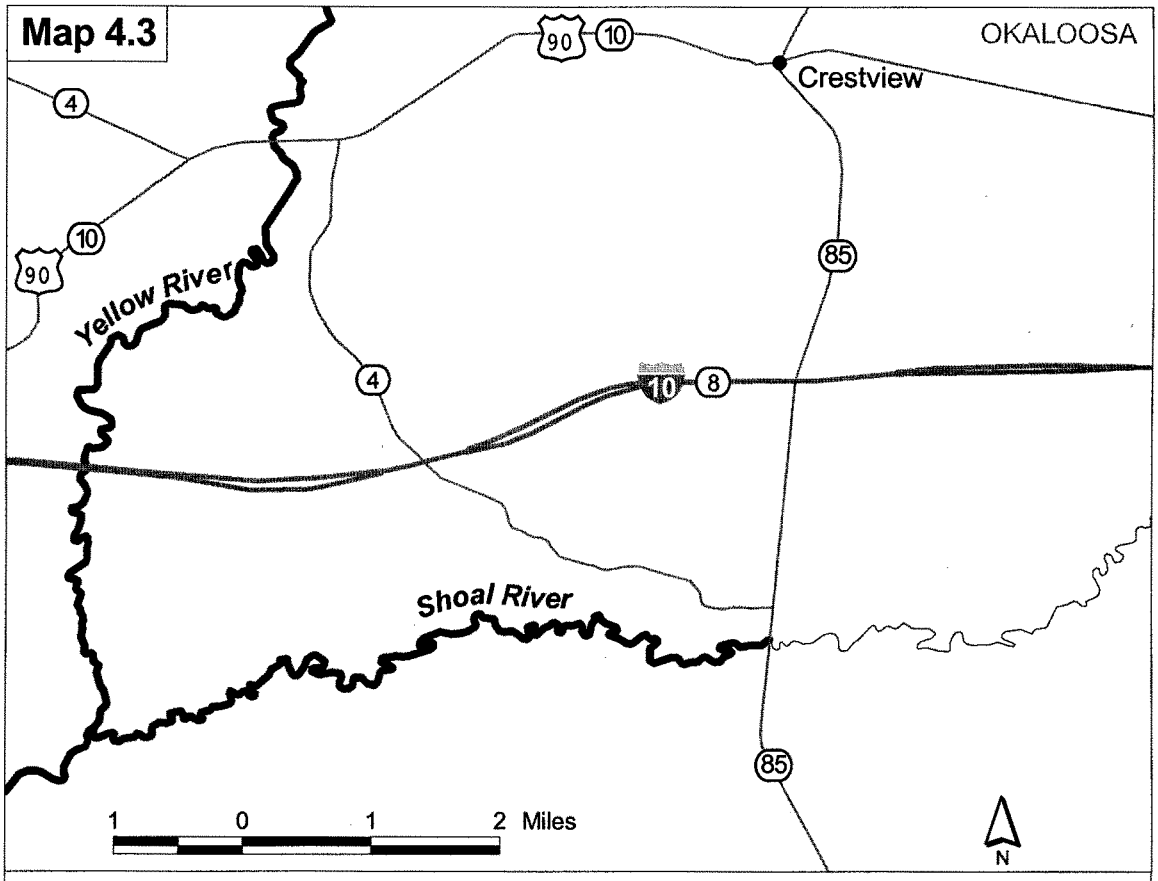
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



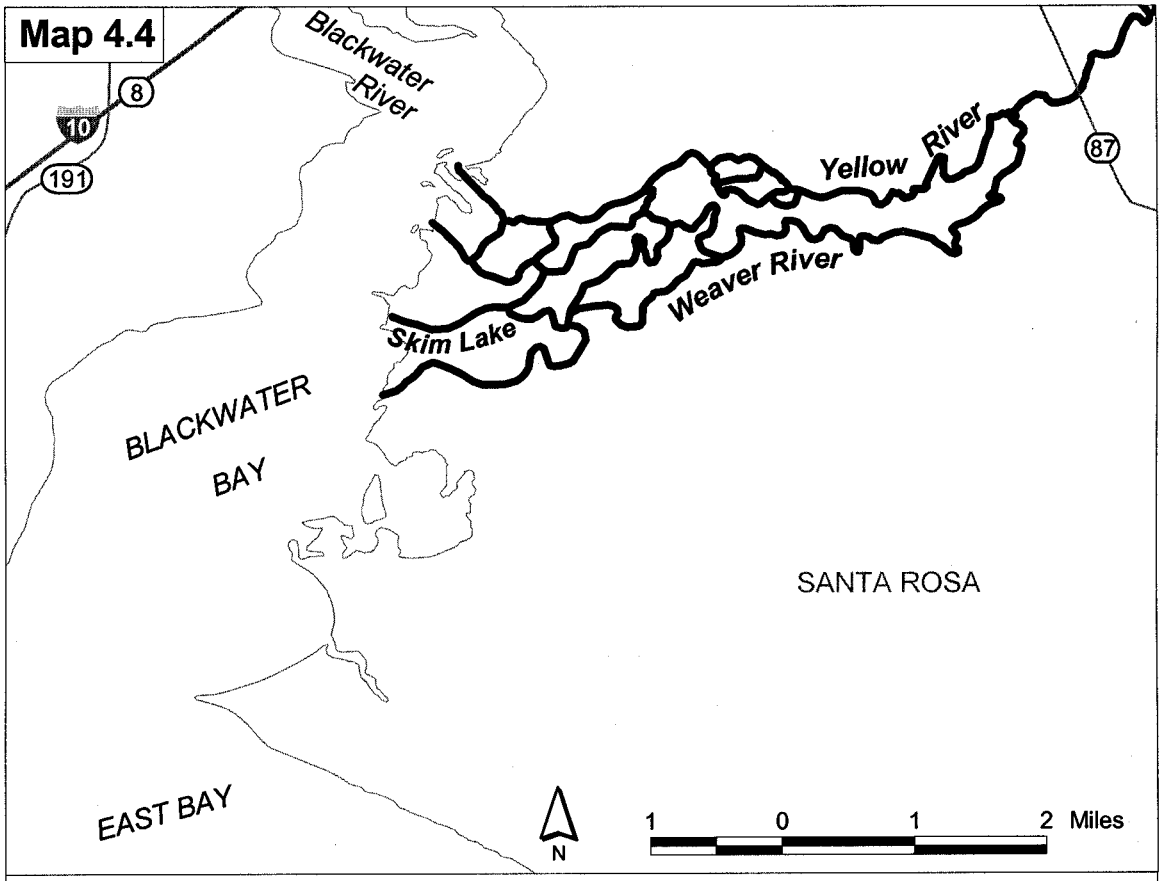
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



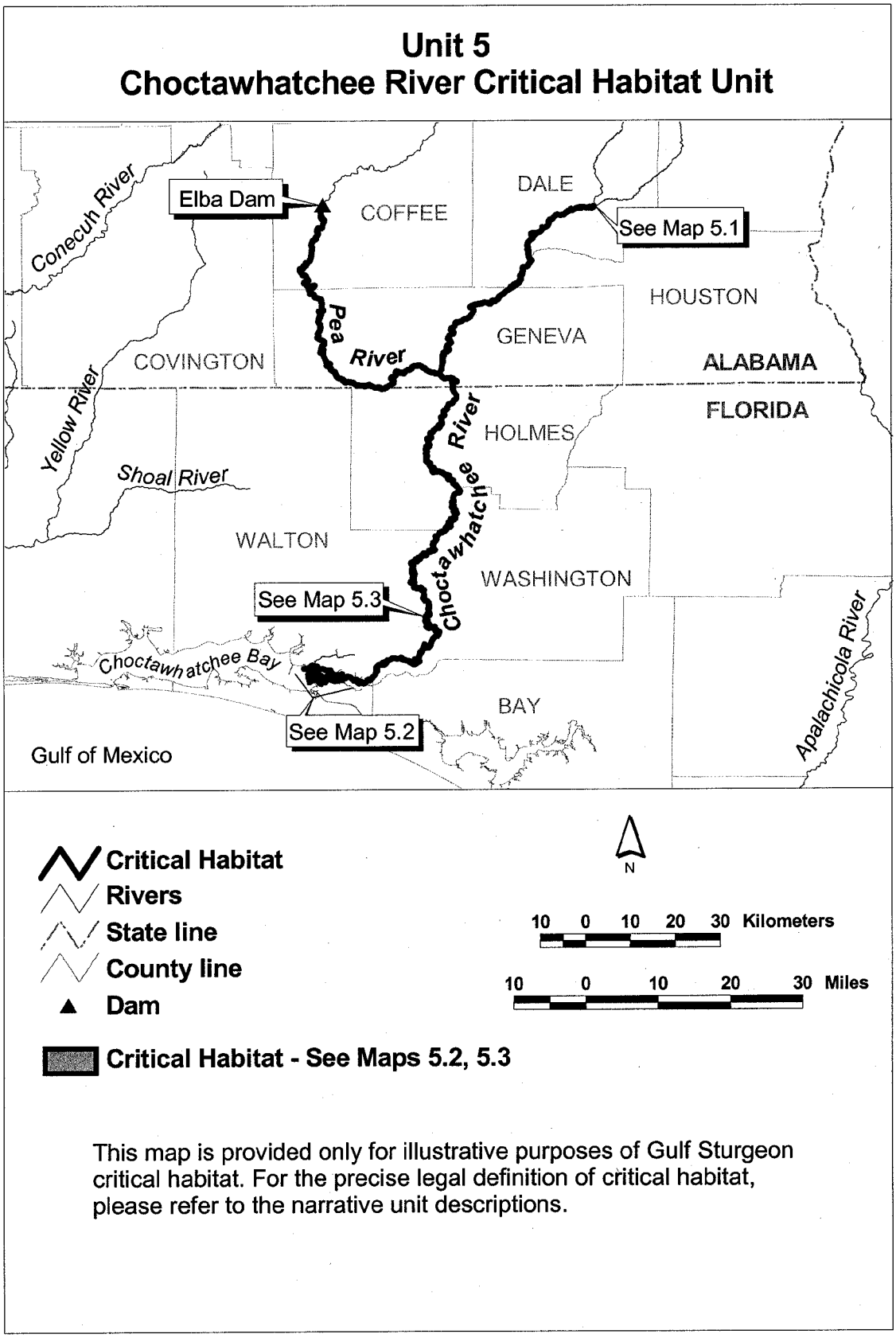
BILLING CODE 4310–55–C

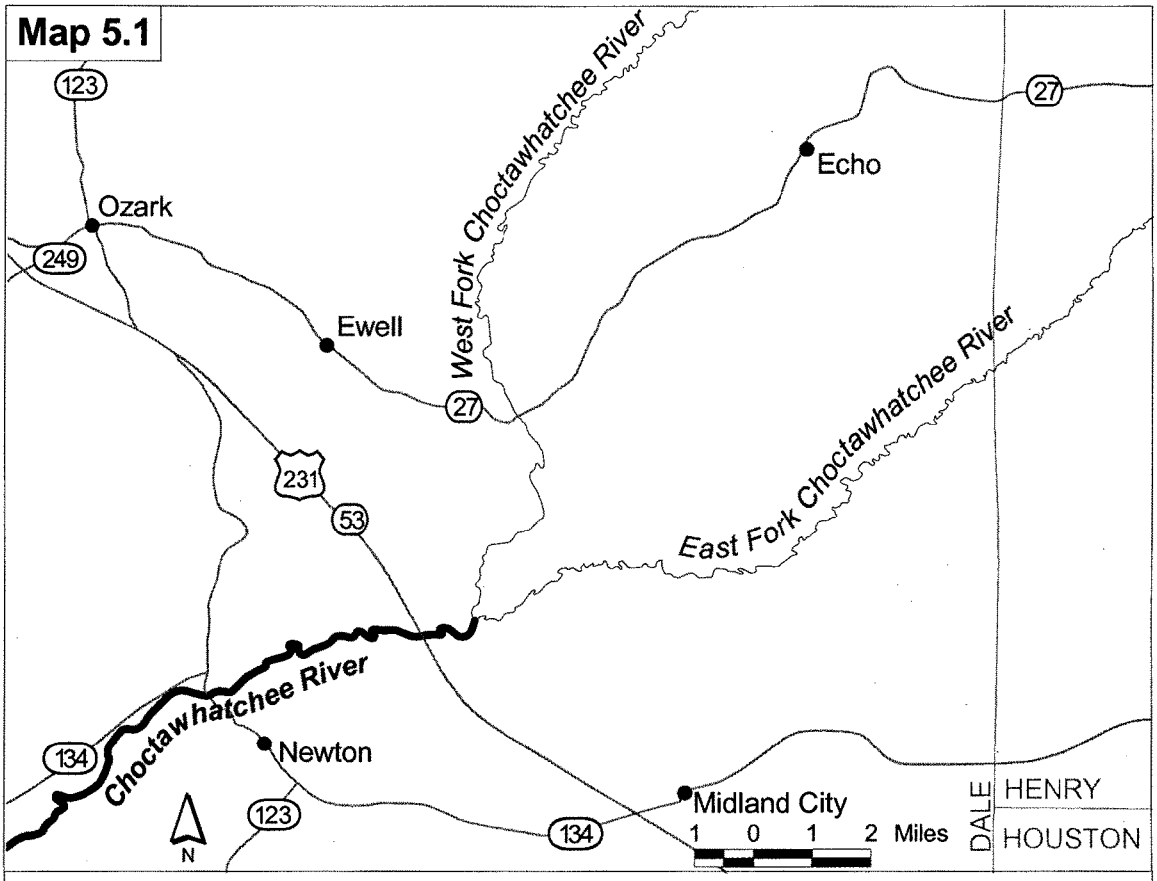
(8) *Unit 5*: Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama.

(i) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

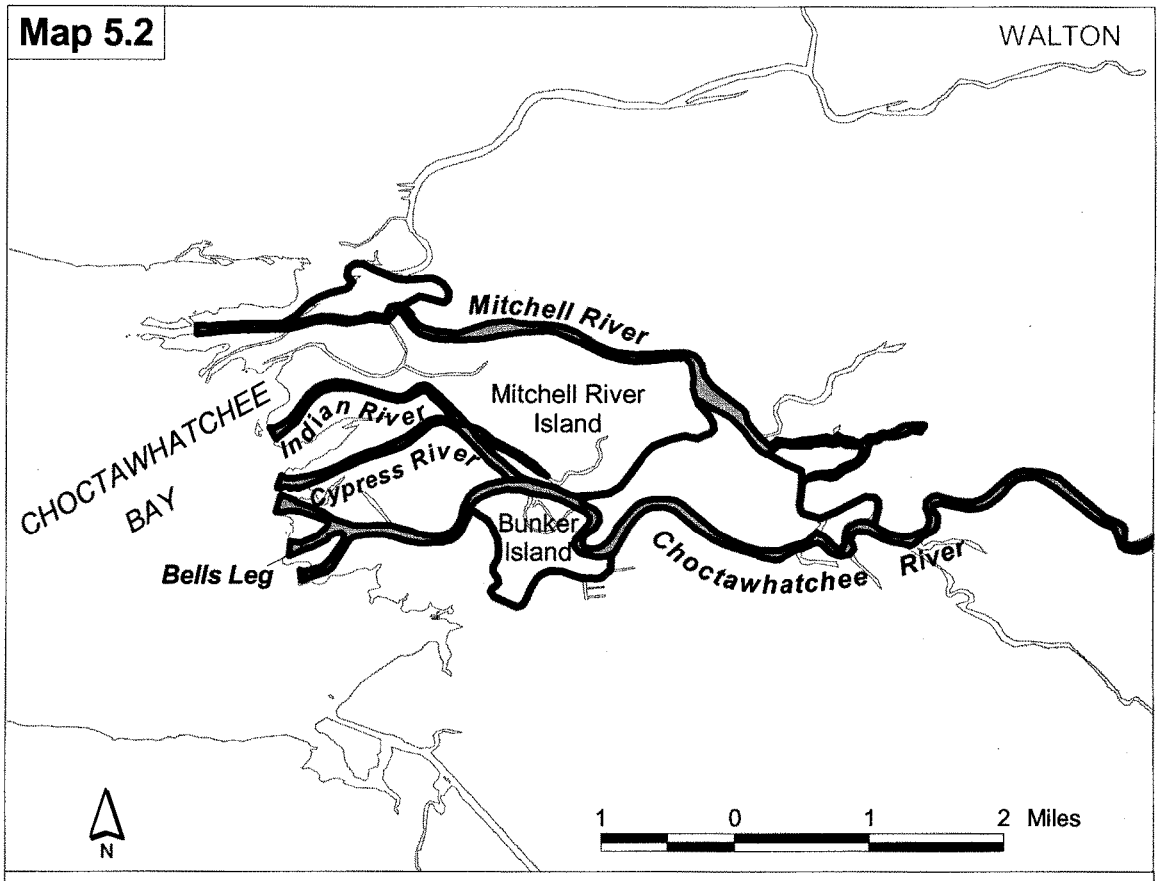
(ii) Maps of Unit 5 follow:

BILLING CODE 4310–55–P

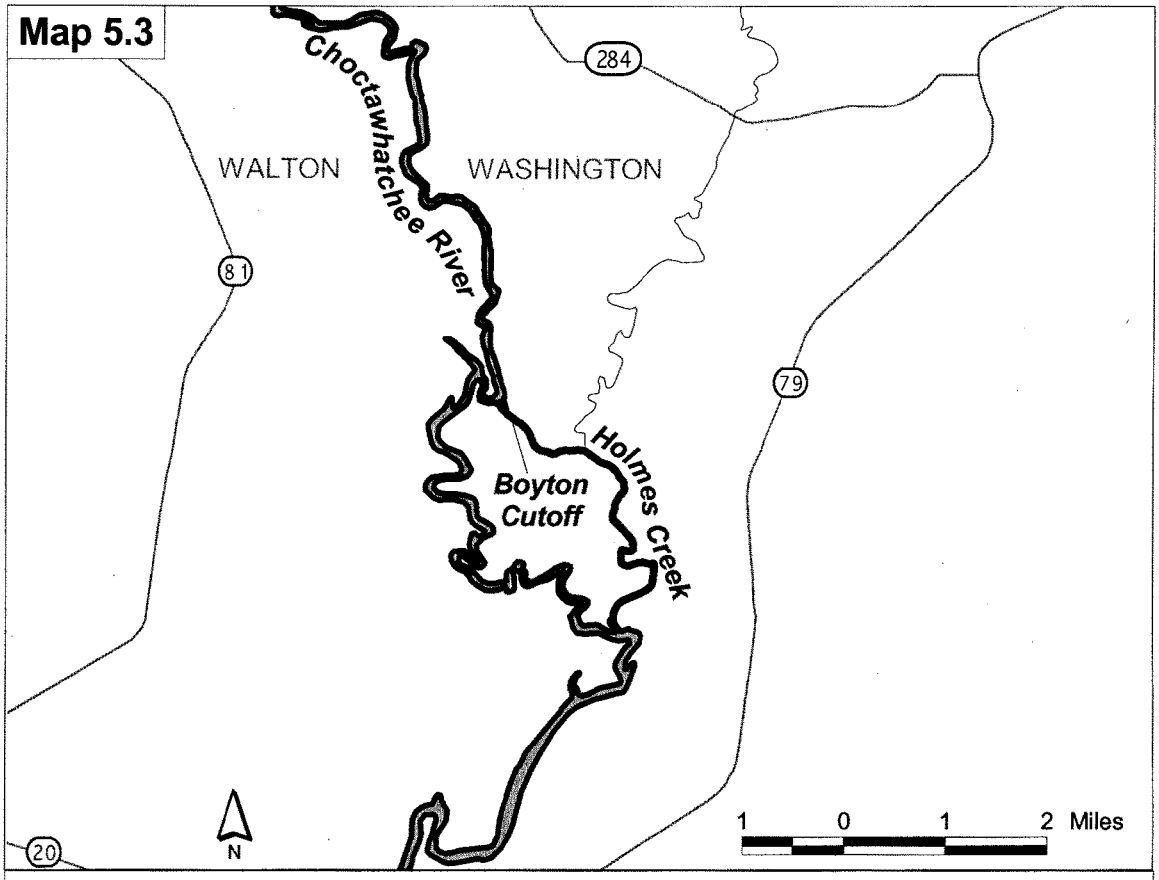

Unit 5
Choctawhatchee River Critical Habitat Unit
Conecuh River
Elba Dam
COFFEE
DALE
See Map 5.1
HOUSTON
Pea River
GENEVA
COVINGTON
ALABAMA
FLORIDA
Yellow River
Choctawhatchee River
HOLMES
Shoal River
WALTON
WASHINGTON
See Map 5.3
Choctawhatchee Bay
Apalachicola River
BAY
See Map 5.2
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
Critical Habitat - See Maps 5.2, 5.3
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

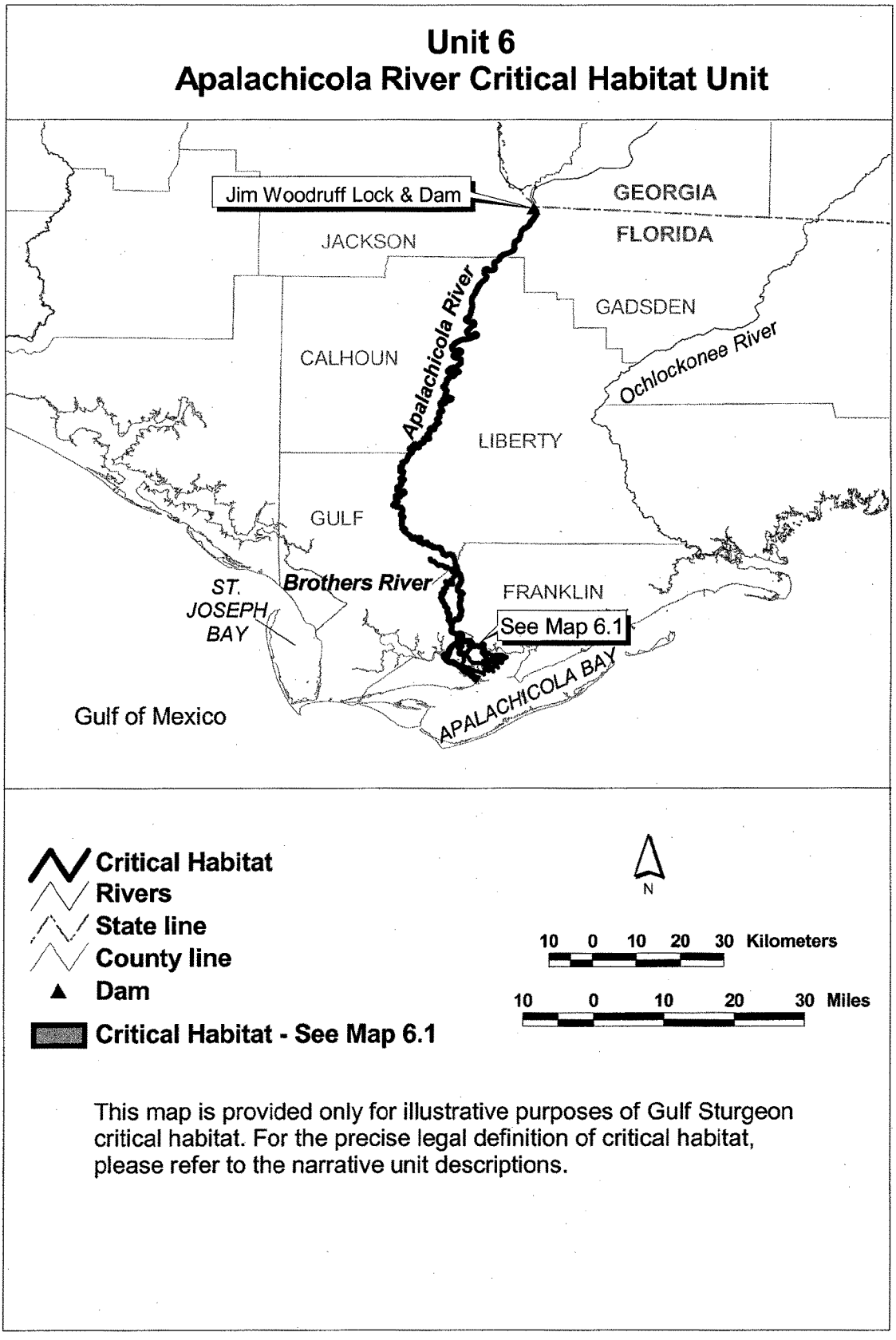
BILLING CODE 4310–55–C

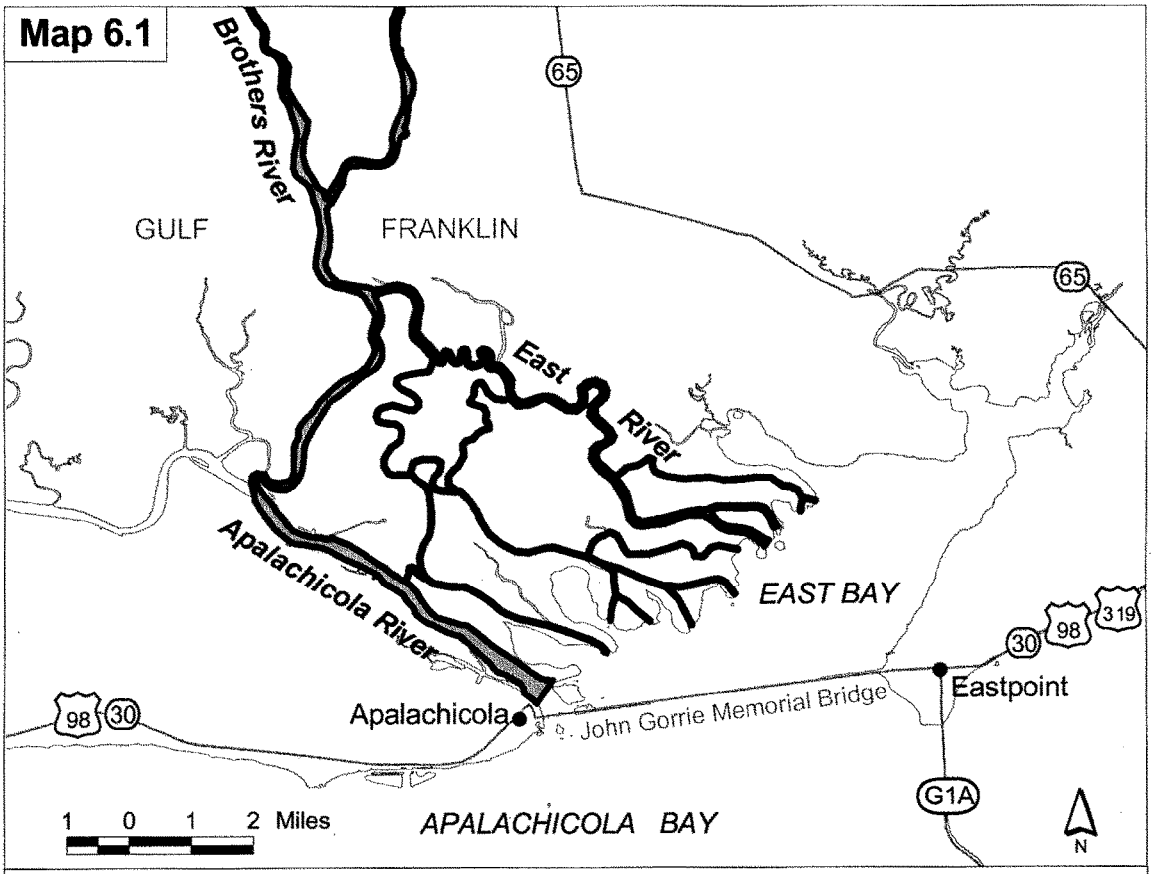
(9) *Unit 6*: Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida.

(i) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(ii) Maps of Unit 6 follow:

BILLING CODE 4310–55–P


Unit 6
Apalachicola River Critical Habitat Unit
Jim Woodruff Lock & Dam
GEORGIA
FLORIDA
JACKSON
GADSDEN
CALHOUN
Apalachicola River
Ochlockonee River
LIBERTY
GULF
Brothers River
ST. JOSEPH BAY
FRANKLIN
See Map 6.1
APALACHICOLA BAY
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Map 6.1
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

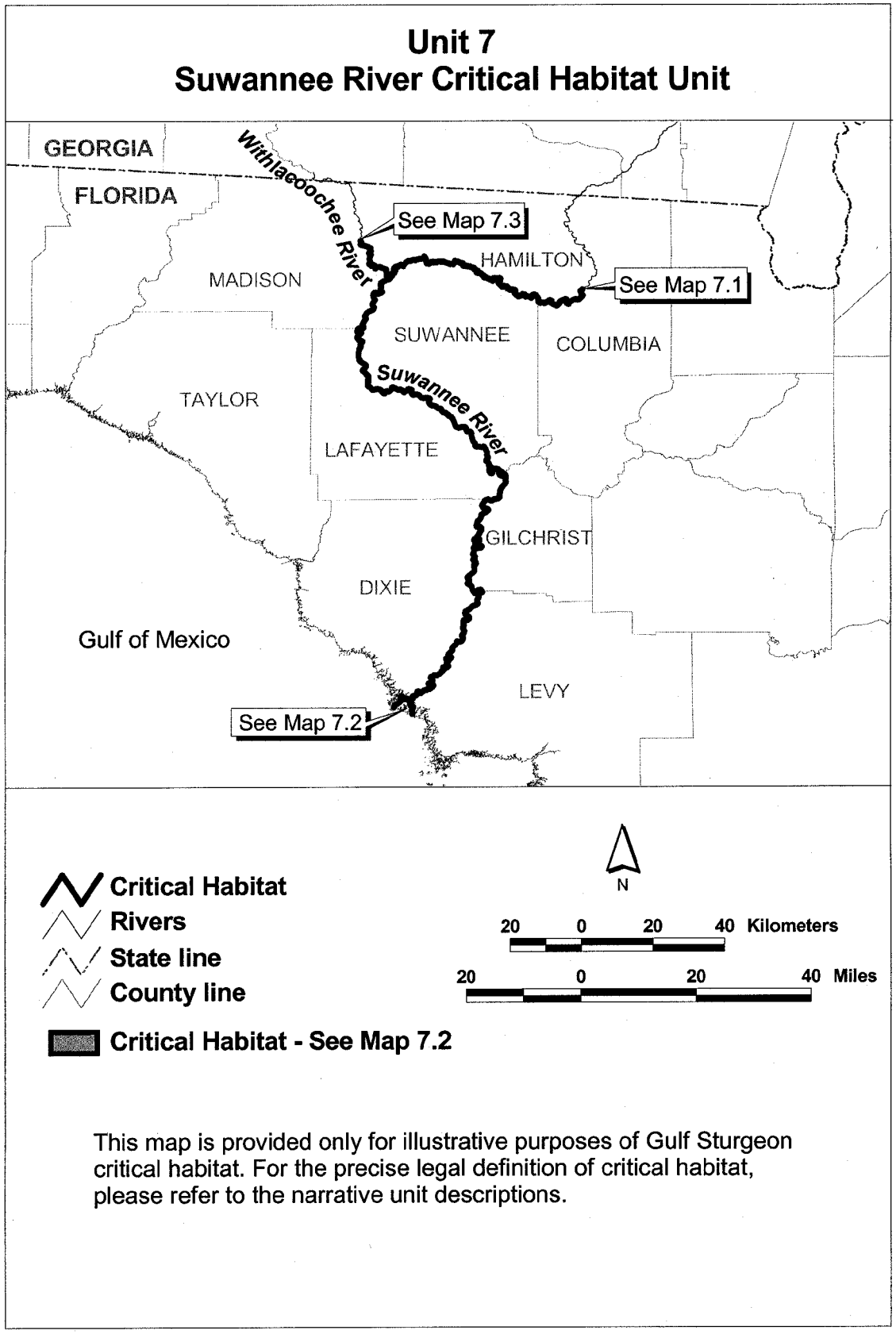
BILLING CODE 4310–55–C

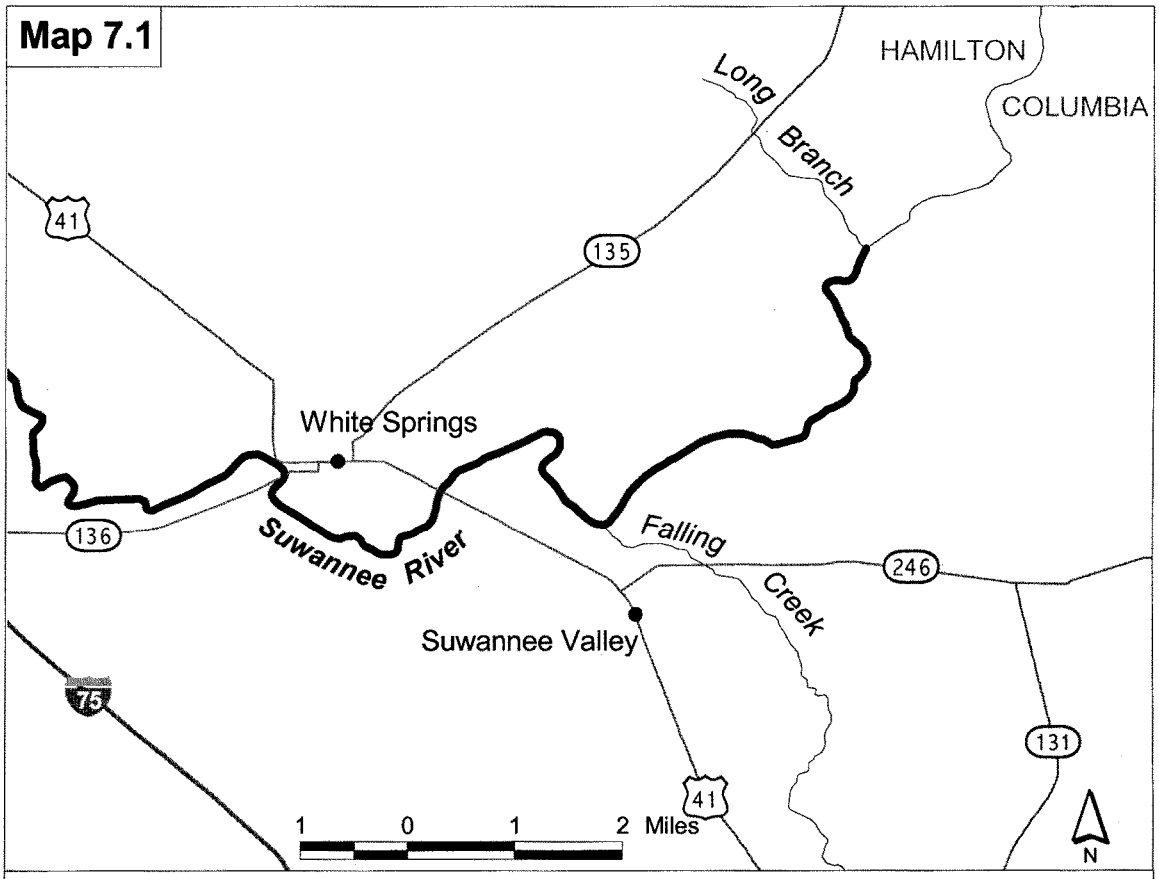
(10) *Unit 7:* Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida.

(i) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

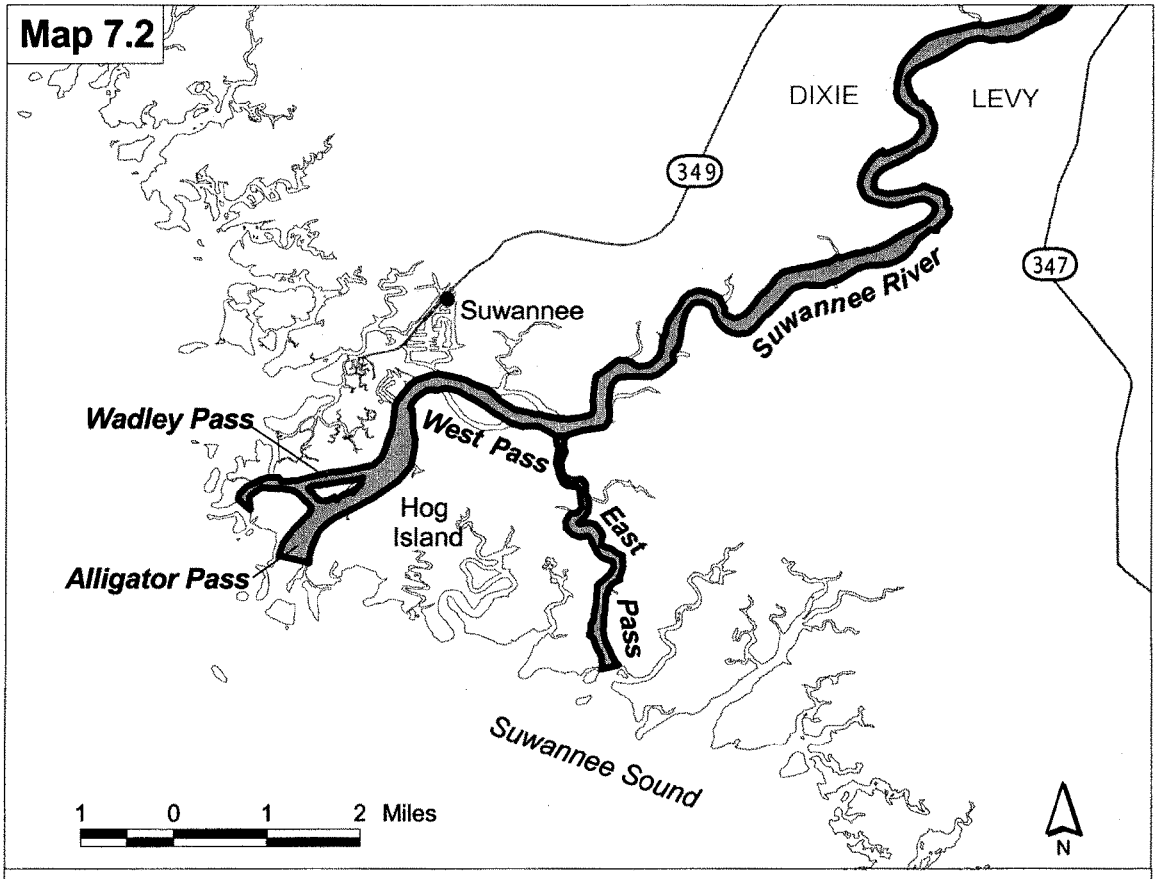
(ii) Maps of Unit 7 follow:

BILLING CODE 4310–55–P

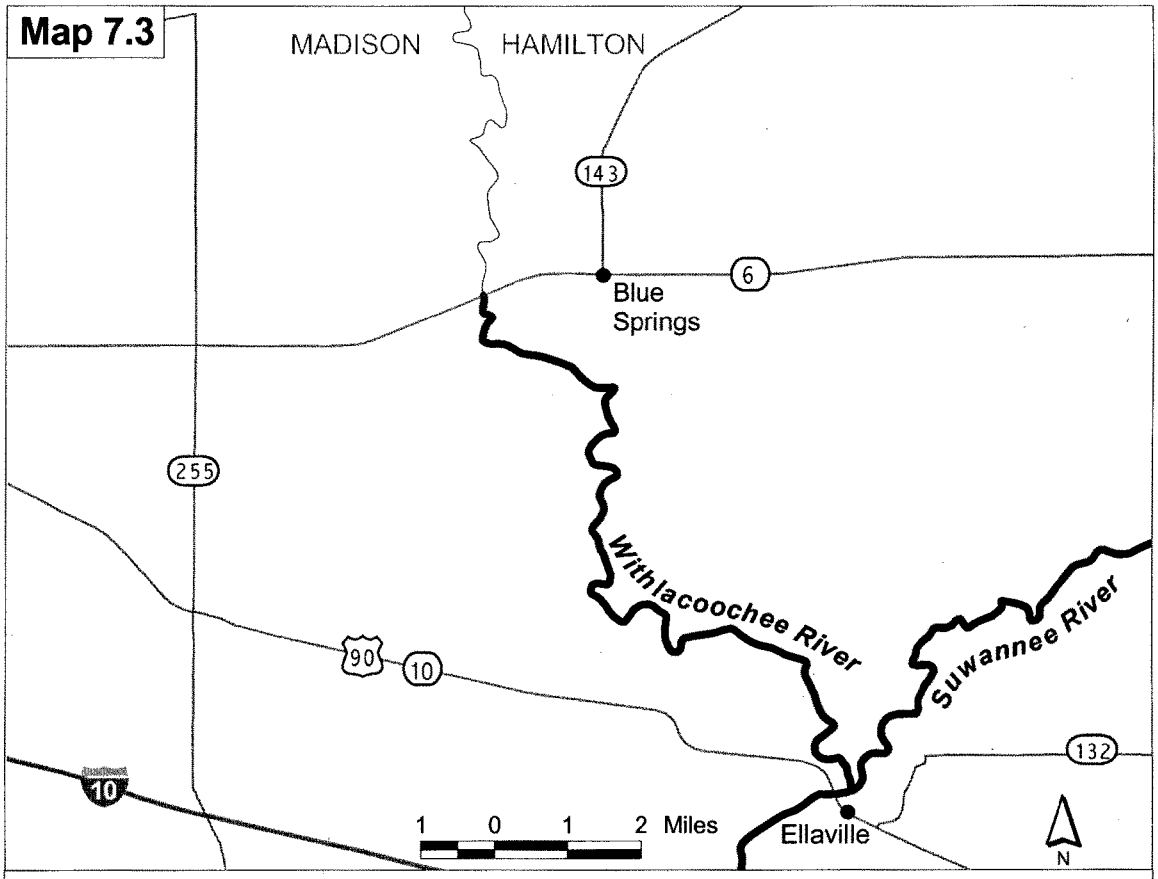

Unit 7
Suwannee River Critical Habitat Unit
GEORGIA
FLORIDA
Withlacoochee River
See Map 7.3
HAMILTON
MADISON
See Map 7.1
SUWANNEE
COLUMBIA
Suwannee River
TAYLOR
LAFAYETTE
GILCHRIST
DIXIE
Gulf of Mexico
LEVY
See Map 7.2
Critical Habitat
Rivers
State line
County line
Critical Habitat - See Map 7.2
N
20 0 20 40 Kilometers
20 0 20 40 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

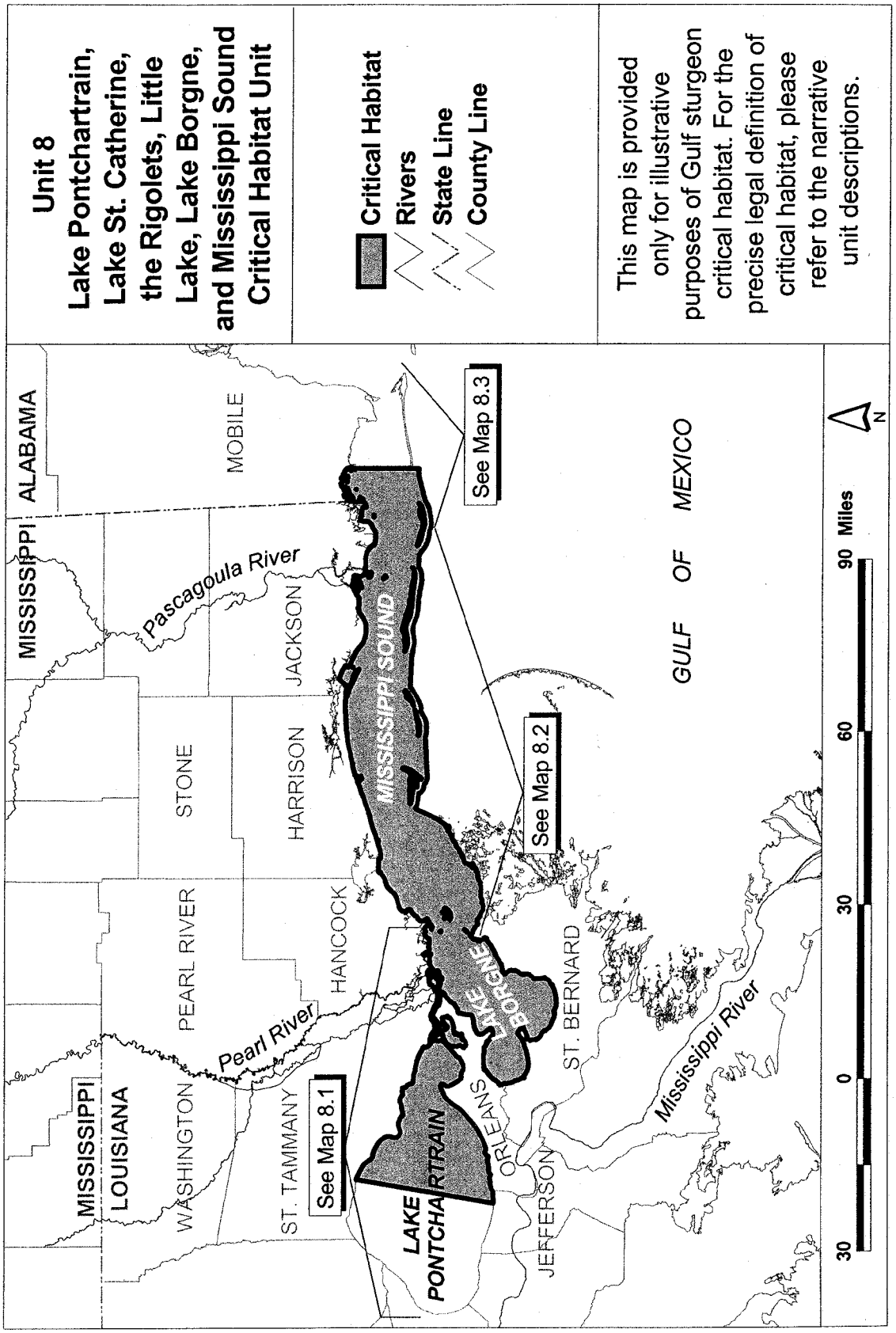
BILLING CODE 4310–55–C

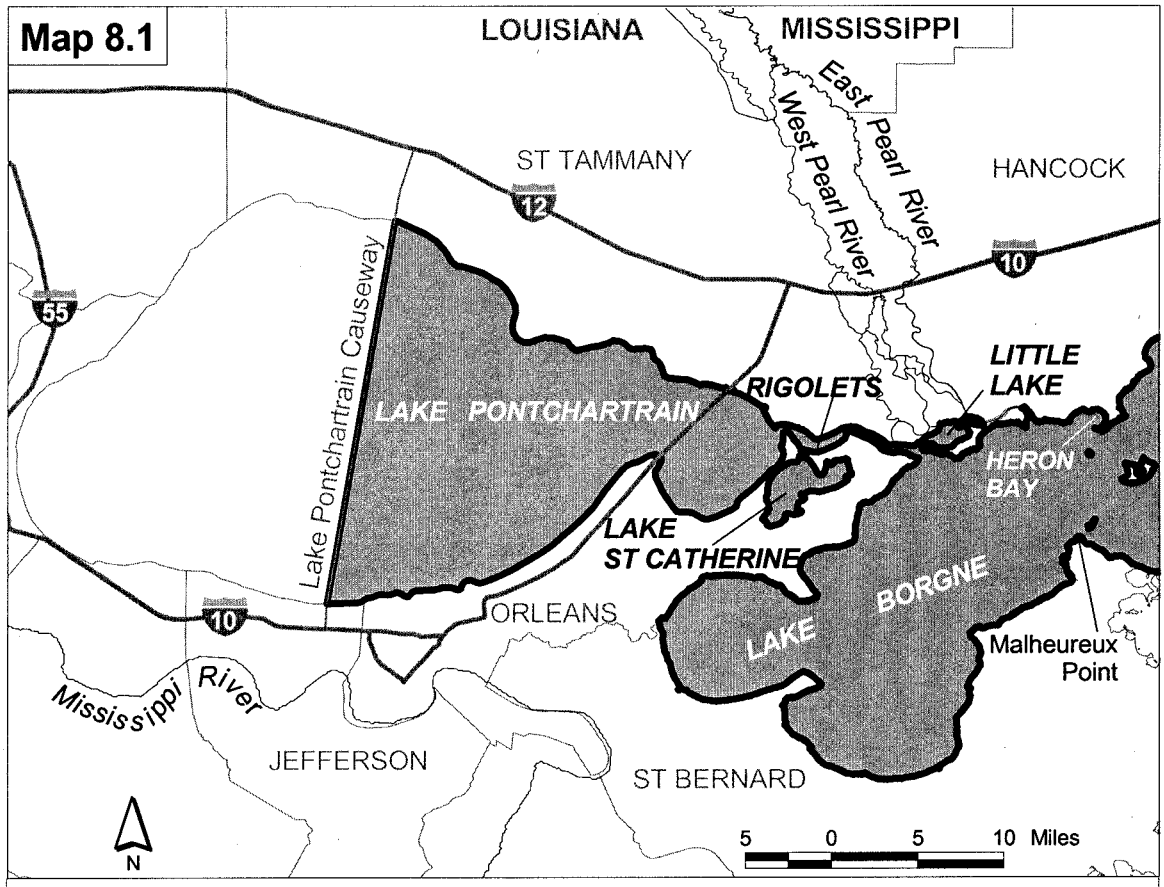
(11) *Unit 8:* Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.

(i) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Proposed critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, Mississippi and Point aux Pins, Alabama. Proposed critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the westernmost extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 (c), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8′W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

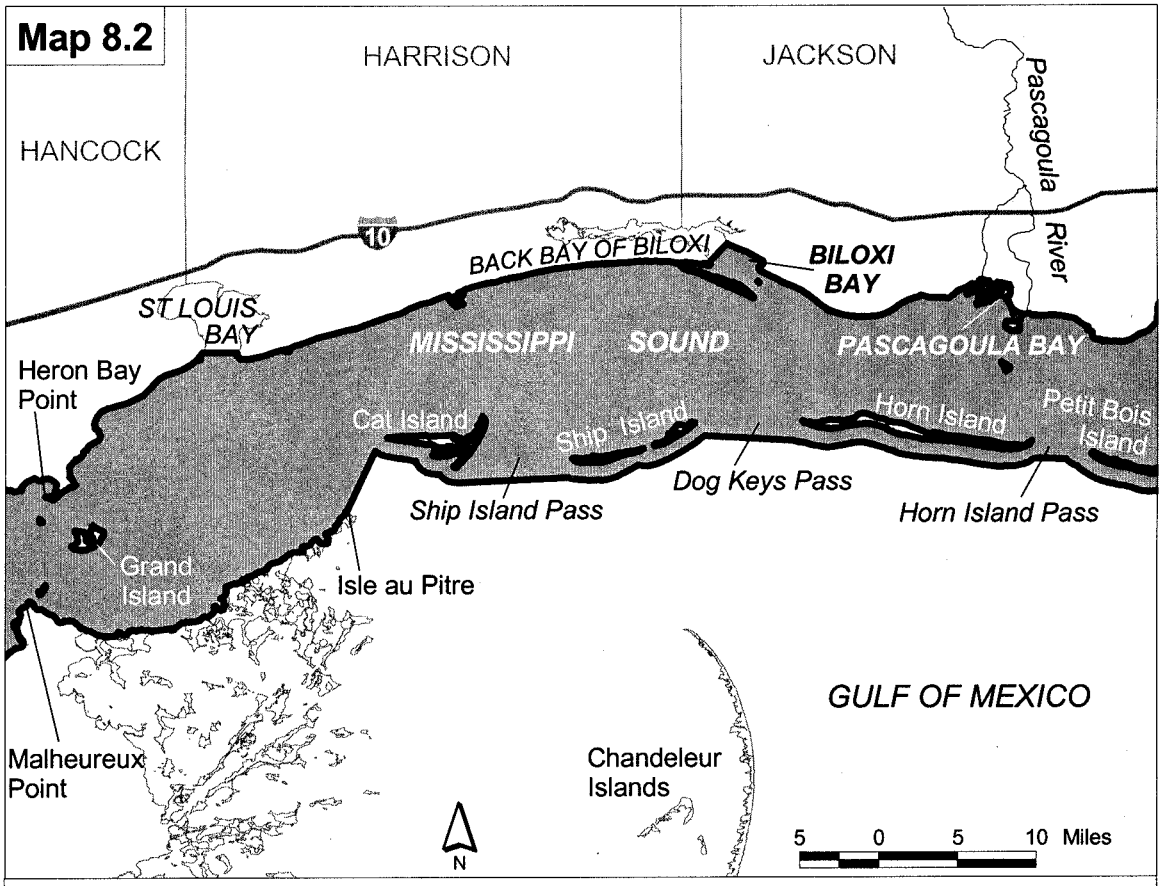
(ii) Maps of Unit 8 follow:

BILLING CODE 4310–55–P

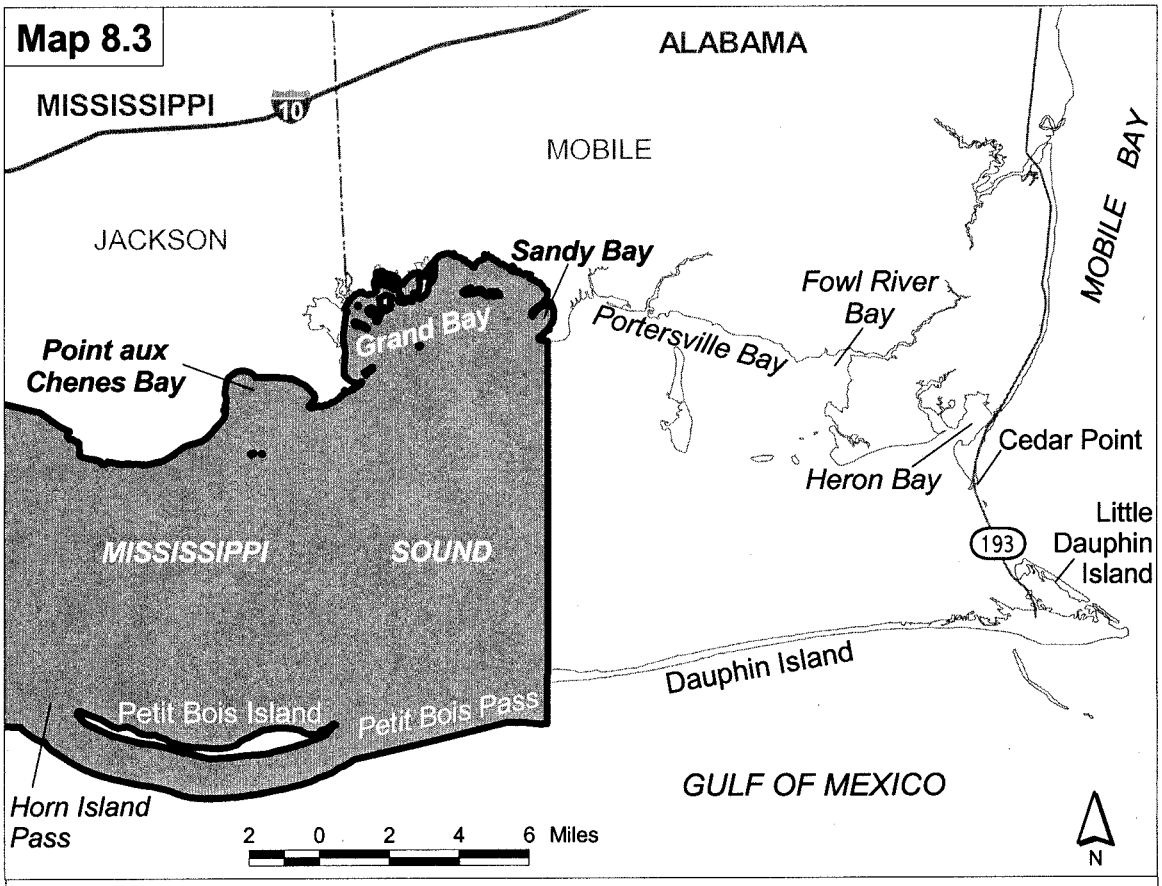

Unit 8
Lake Pontchartrain, Lake St. Catherine, the Rigolets, Little Lake, Lake Borgne, and Mississippi Sound Critical Habitat Unit
Critical Habitat
Rivers
State Line
County Line
This map is provided only for illustrative purposes of Gulf sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
ALABAMA
MISSISSIPPI
LOUISIANA
MOBILE
JACKSON
HARRISON
STONE
PEARL RIVER
WASHINGTON
HANCOCK
ST. TAMMANY
ORLEANS
JEFFERSON
ST. BERNARD
Pascagoula River
Pearl River
Mississippi River
MISSISSIPPI SOUND
LAKE BORGNE
LAKE PONTCHARTRAIN
GULF OF MEXICO
See Map 8.1
See Map 8.2
See Map 8.3
30 0 30 60 90 Miles
N



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

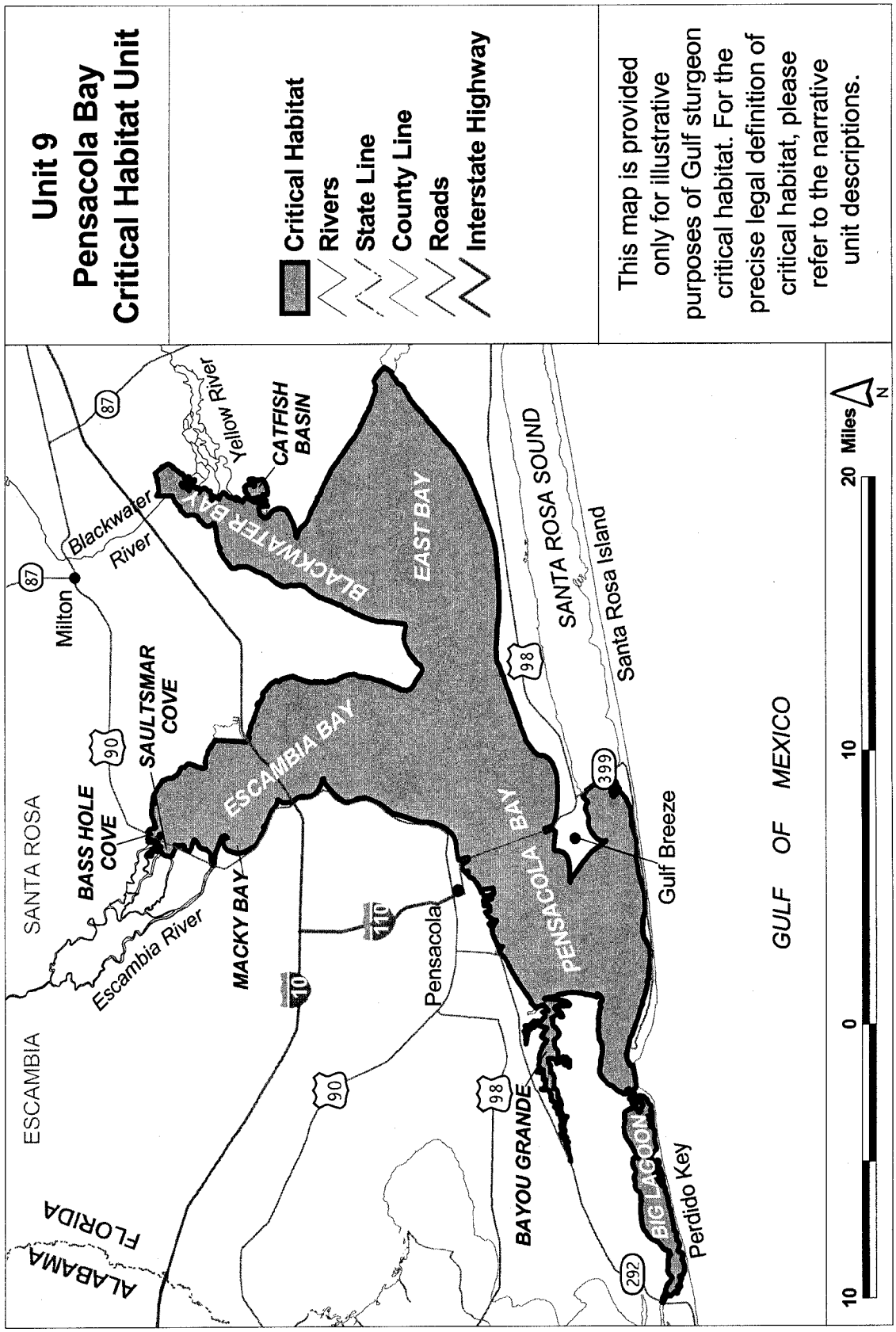
BILLING CODE 4310–55–C

(12) *Unit 9:* Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.

(i) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810 (g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, Florida. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(ii) A map of Unit 9 follows:

BILLING CODE 4310–55–P



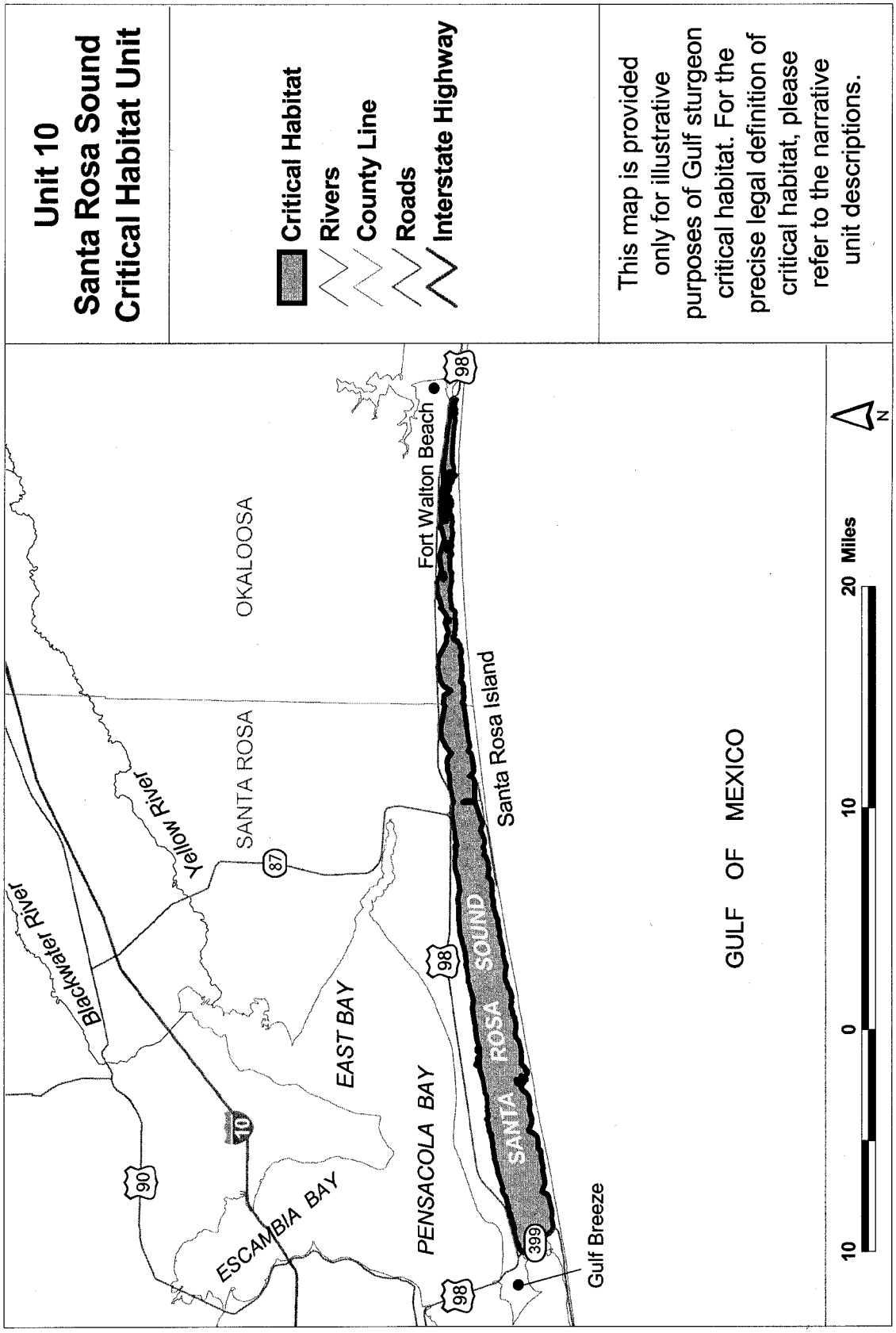
BILLING CODE 4310–55–C

(13) *Unit 10:* Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida.

(i) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, Florida. The eastern boundary is the U.S. Highway 98 bridge in Fort Walton Beach, Florida. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(ii) A map of Unit 10 follows:

BILLING CODE 4310–55–P



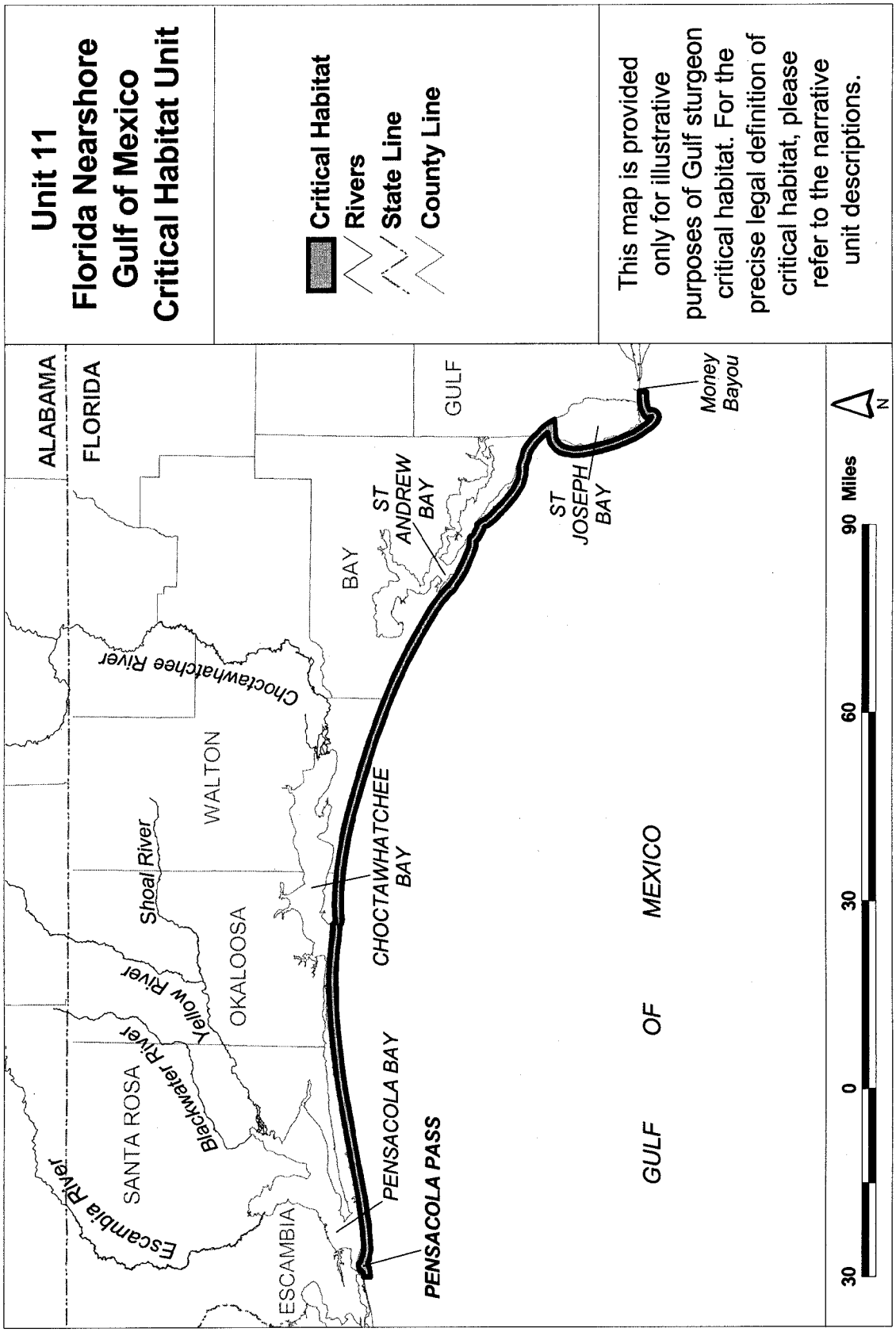
BILLING CODE 4310–55–C

(14) *Unit 11:* Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties in Florida.

(i) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′ W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′ W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(ii) A map of Unit 11 follows:

BILLING CODE 4310–55–P



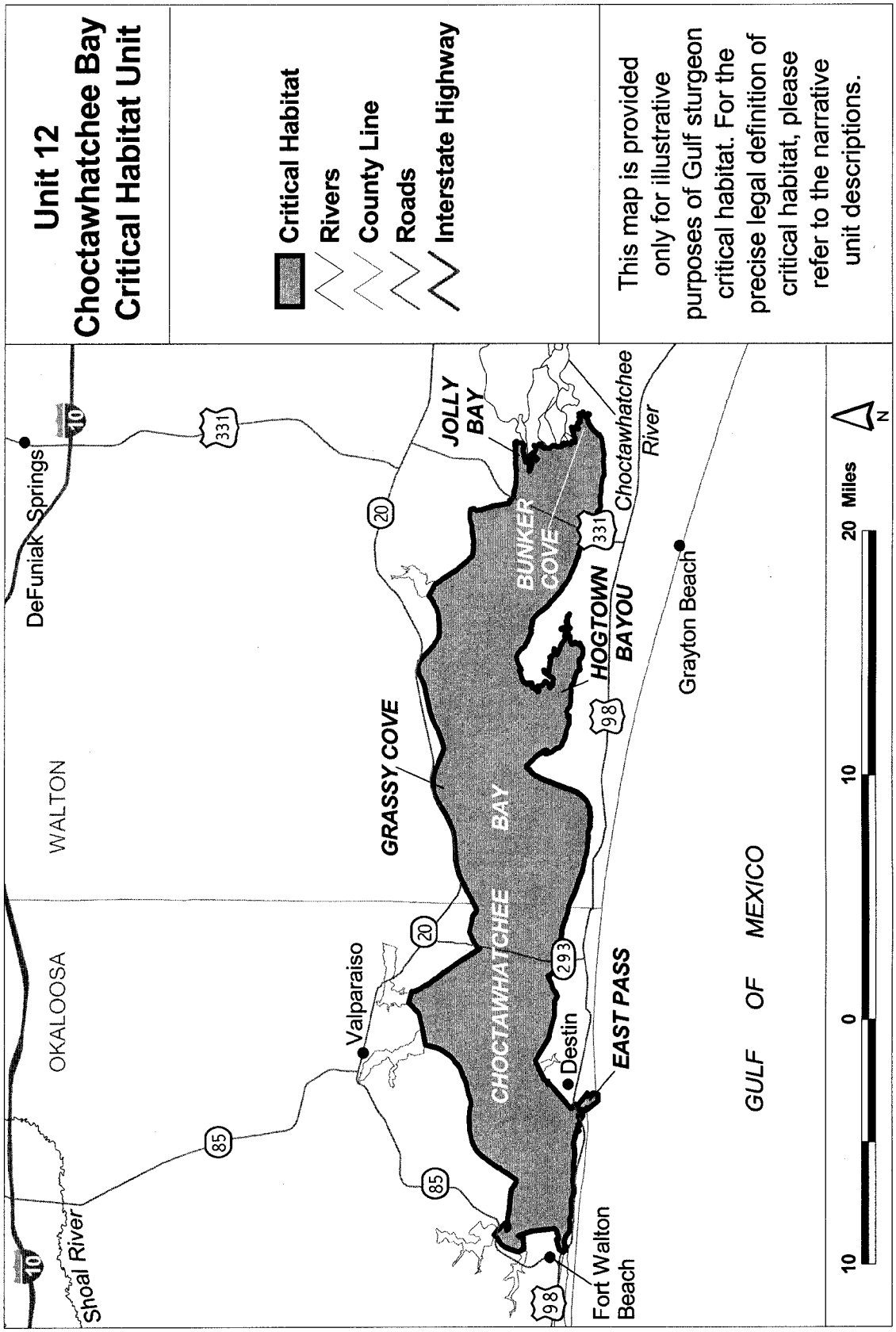
BILLING CODE 4310–55–C

(15) *Unit 12:* Choctawhatchee Bay in Okaloosa and Walton Counties, Florida.

(i) *Unit 12* includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the U.S. Highway 98 bridge at Fort Walton Beach, Florida. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810 (f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(ii) A map of Unit 12 follows:

BILLING CODE 4310–55–P



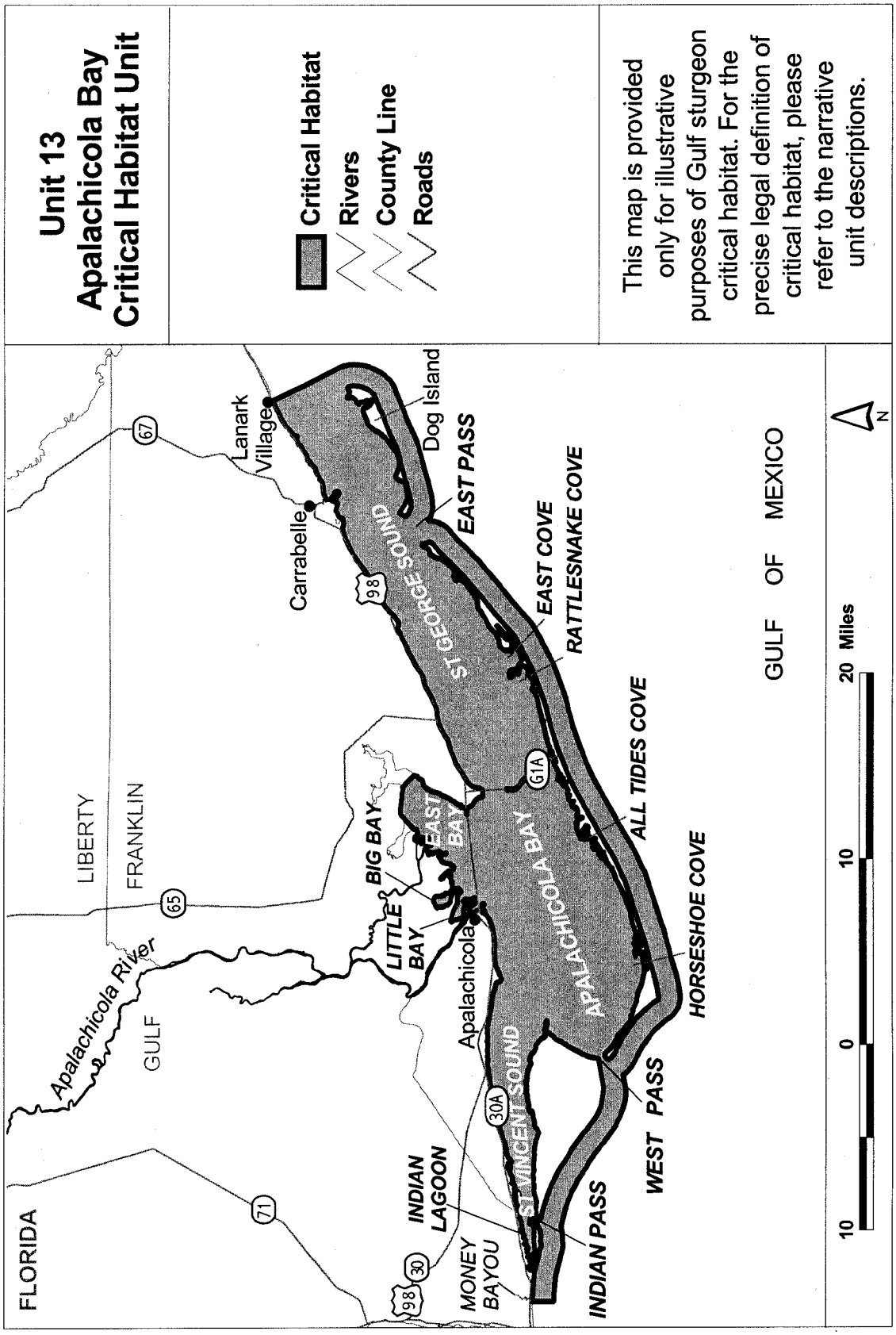
BILLING CODE 4310–55–C

(16) *Unit 13:* Apalachicola Bay in Gulf and Franklin County, Florida.

(i) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St. George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e)–(h)). The western boundary is the line of longitude 85°17.0′ W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′ N, 84°35.0′ W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′ N, 84°33.2′ W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(ii) A map of Unit 13 follows:

BILLING CODE 4310–55–P



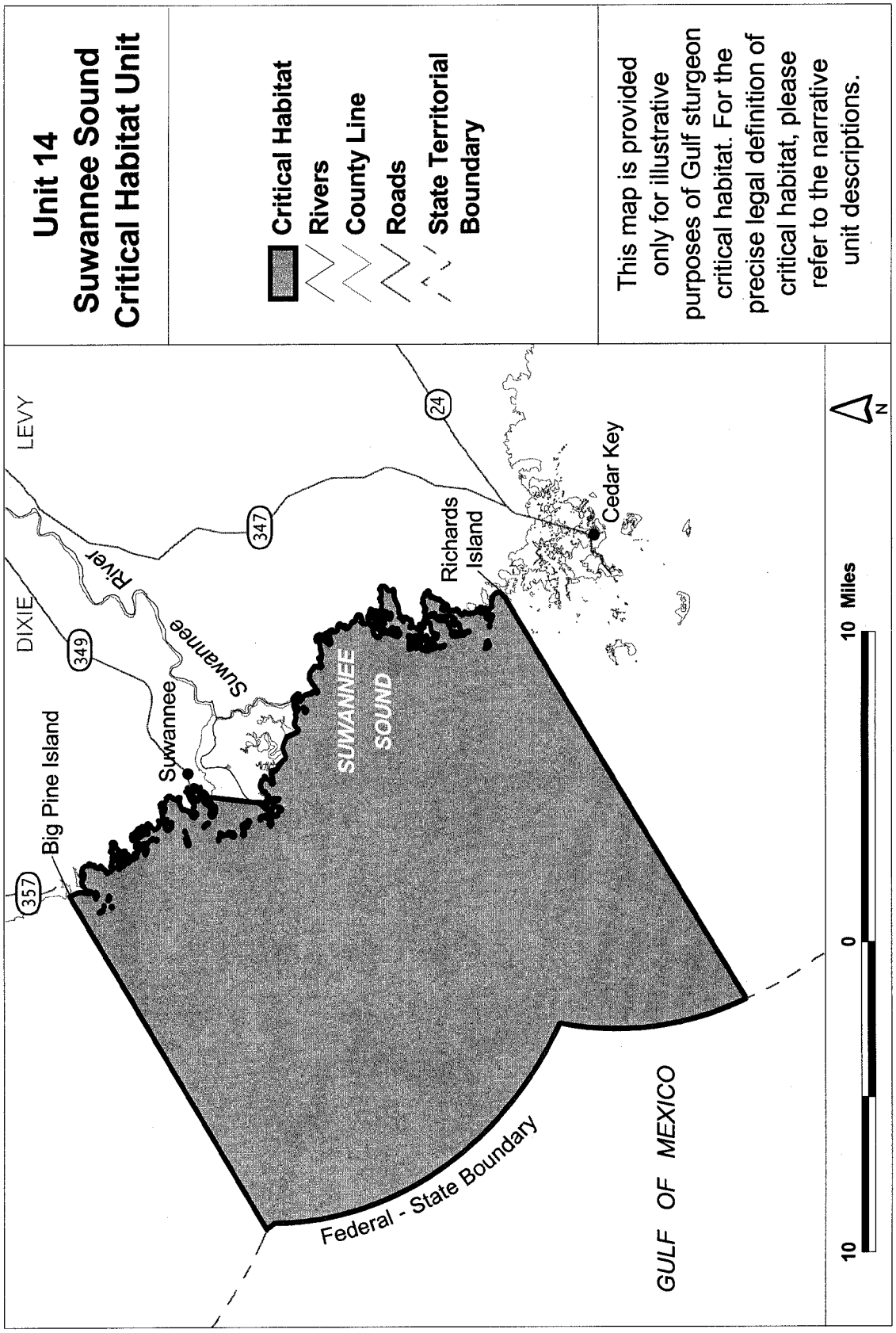
BILLING CODE 4310–55–C

(17) *Unit 14:* Suwannee Sound in Dixie and Levy Counties, Florida.

(i) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′N, 83°12′W) to the Federal-State boundary at 29°17′N, 83°21′W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04′W, 29°11′N) to the Federal-State boundary at 83°15′W, 29°04′N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(ii) A map of Unit 14 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(18)(i) The river reaches within Units 1 to 7 proposed as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(ii) The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rm 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rm 0).

(iii) Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14 therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(iv) The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

(19) Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

* * * * *

PART 226–[AMENDED]

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533

2. Section 226.214 is added to read as follows:

§ 226.214 Critical habitat for Gulf sturgeon.

Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and NMFS. The FWS will maintain primary responsibility for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the DOD, COE, MMS and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS, but with NMFS assistance where needed. Each agency will conduct its own intra-agency consultations as necessary. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water. The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR part 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12. Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas. For a complete description of critical habitat units (1–14) and the constituent elements for Gulf sturgeon see 50 CFR part 17. Units 8 through 14 described below are in estuarine and marine waters, where NMFS has jurisdiction.

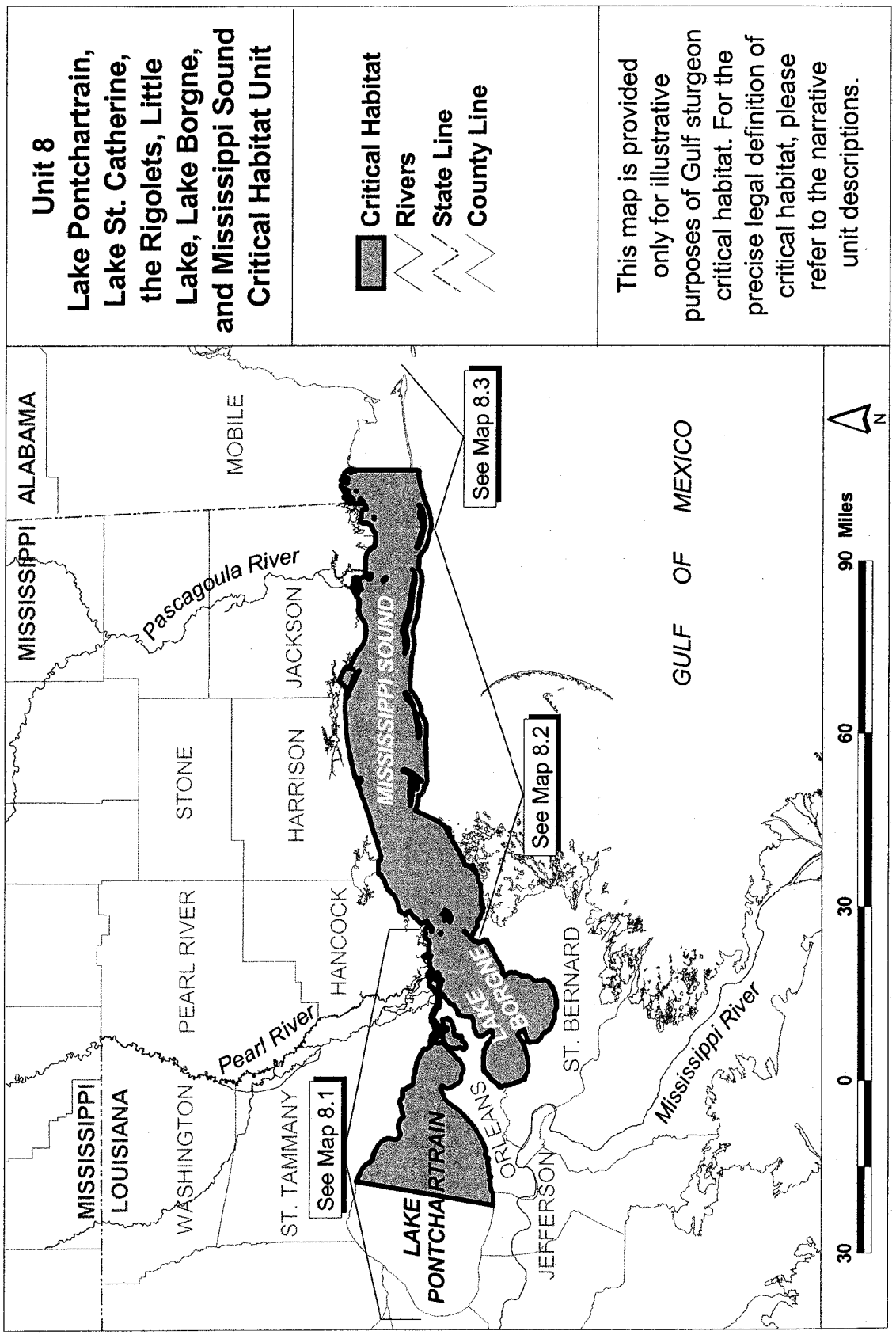
(a) *Unit 8: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in MS, and in Mobile County, AL.*

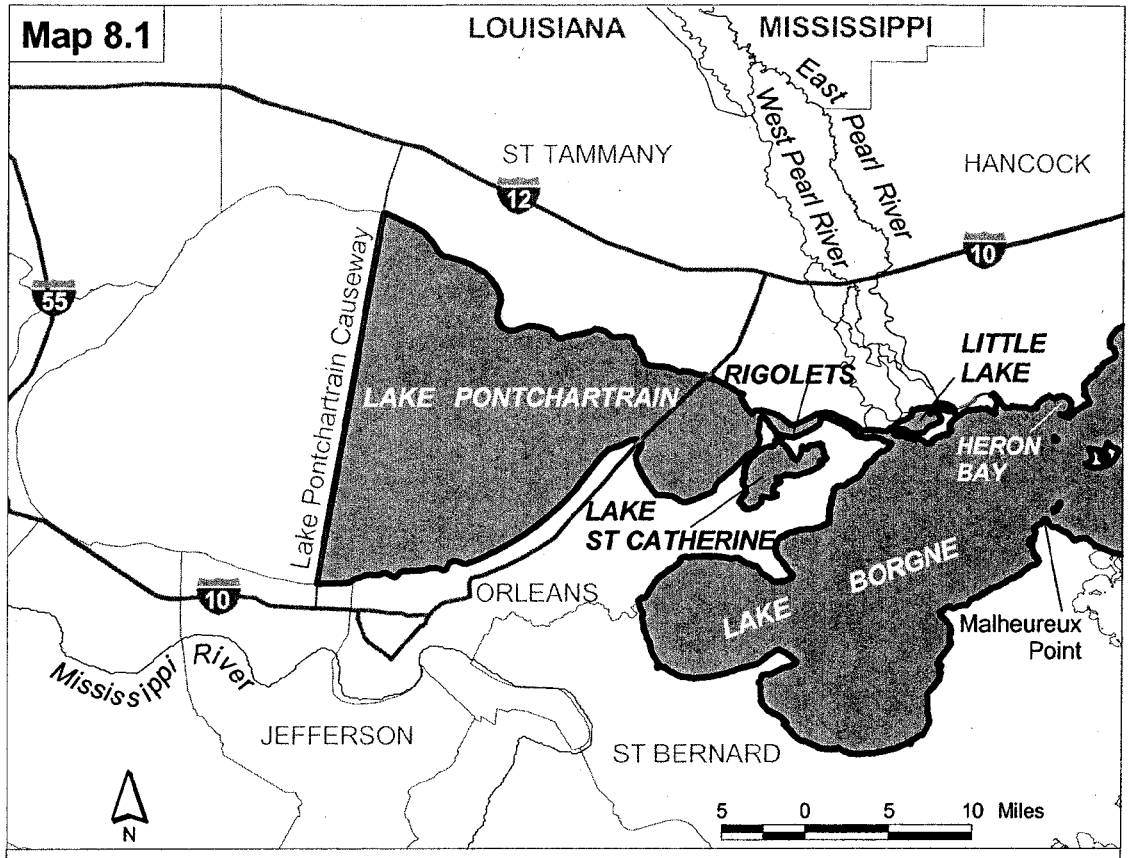
(1) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Proposed critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, MS and Point aux Pins, AL. Proposed critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the western most extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 (c), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude

88°18.8'W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

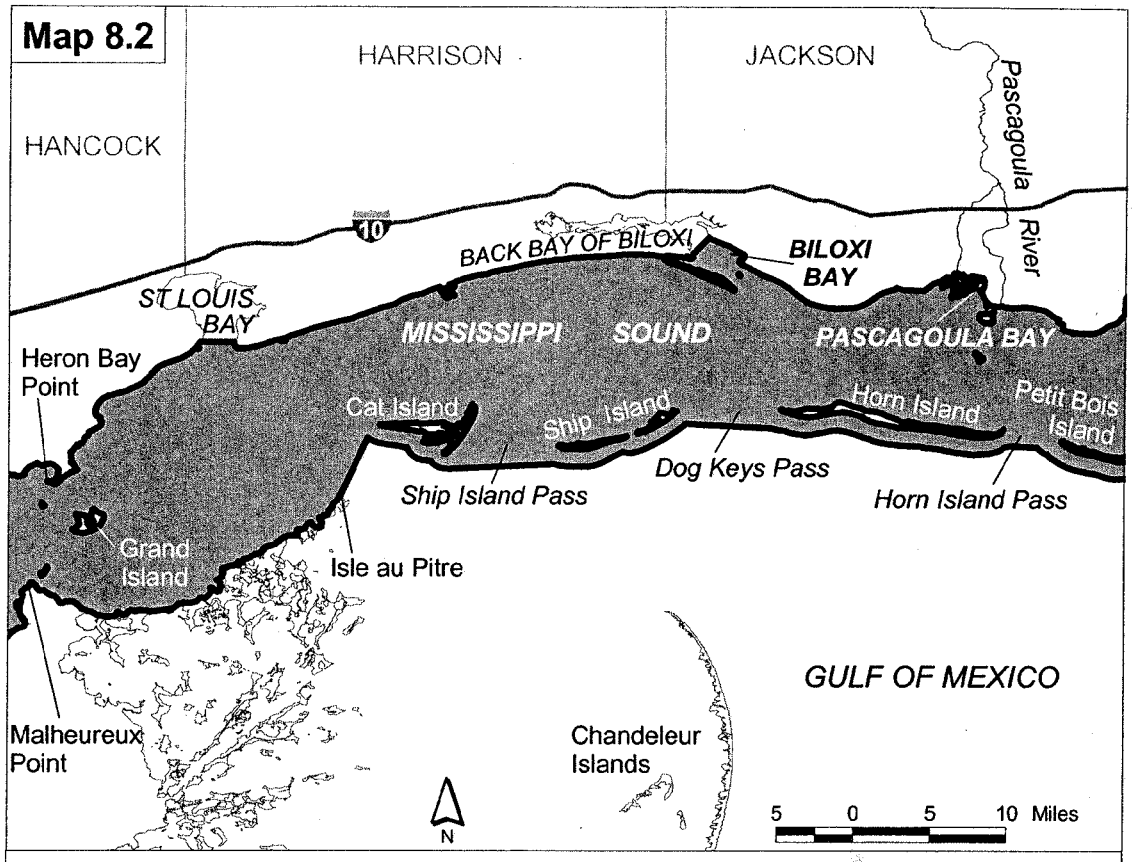
(2) Maps of Unit 8 follow:

BILLING CODE 4310–55–P

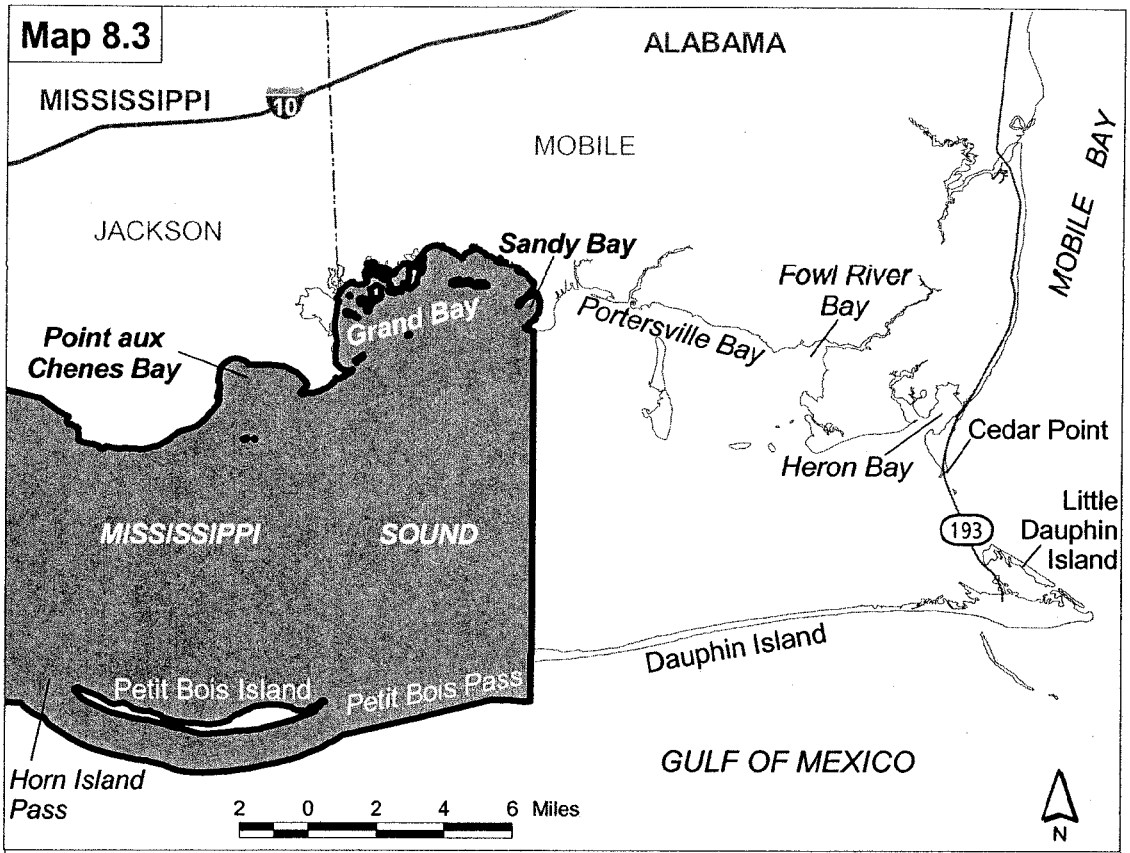

Unit 8
Lake Pontchartrain, Lake St. Catherine, the Rigolets, Little Lake, Lake Borgne, and Mississippi Sound Critical Habitat Unit
Critical Habitat
Rivers
State Line
County Line
This map is provided only for illustrative purposes of Gulf sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
ALABAMA
MISSISSIPPI
LOUISIANA
MOBILE
JACKSON
HARRISON
STONE
PEARL RIVER
WASHINGTON
HANCOCK
ST. TAMMANY
ORLEANS
JEFFERSON
ST. BERNARD
Pascagoula River
Pearl River
Mississippi River
MISSISSIPPI SOUND
LAKE BORGNE
LAKE PONTCHARTRAIN
GULF OF MEXICO
See Map 8.1
See Map 8.2
See Map 8.3
30 0 30 60 90 Miles
N



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

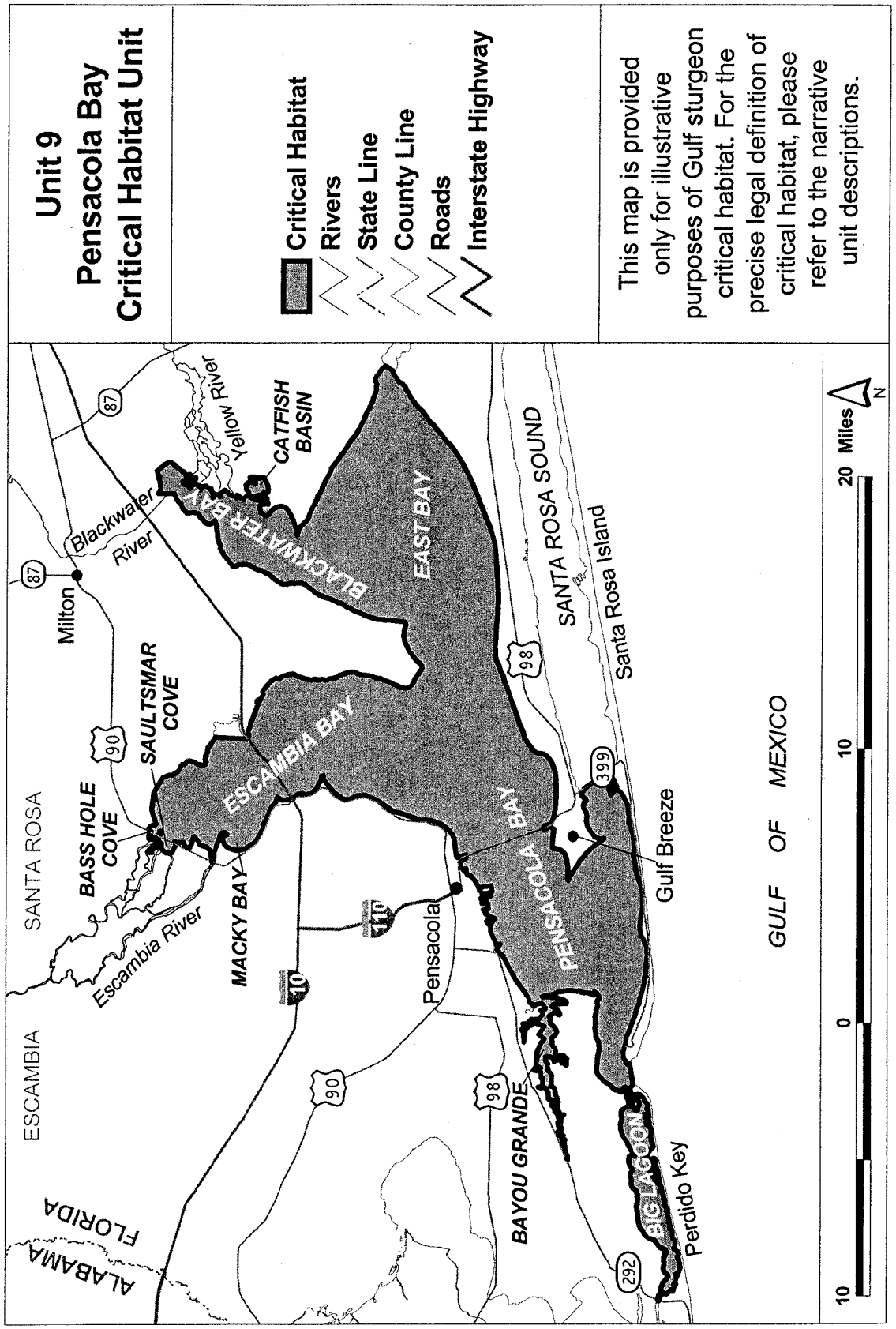
BILLING CODE 4310–55–C

(b) *Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.*

(1) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810 (g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, FL. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(2) A map of Unit 9 follows:

BILLING CODE 4310–55–P



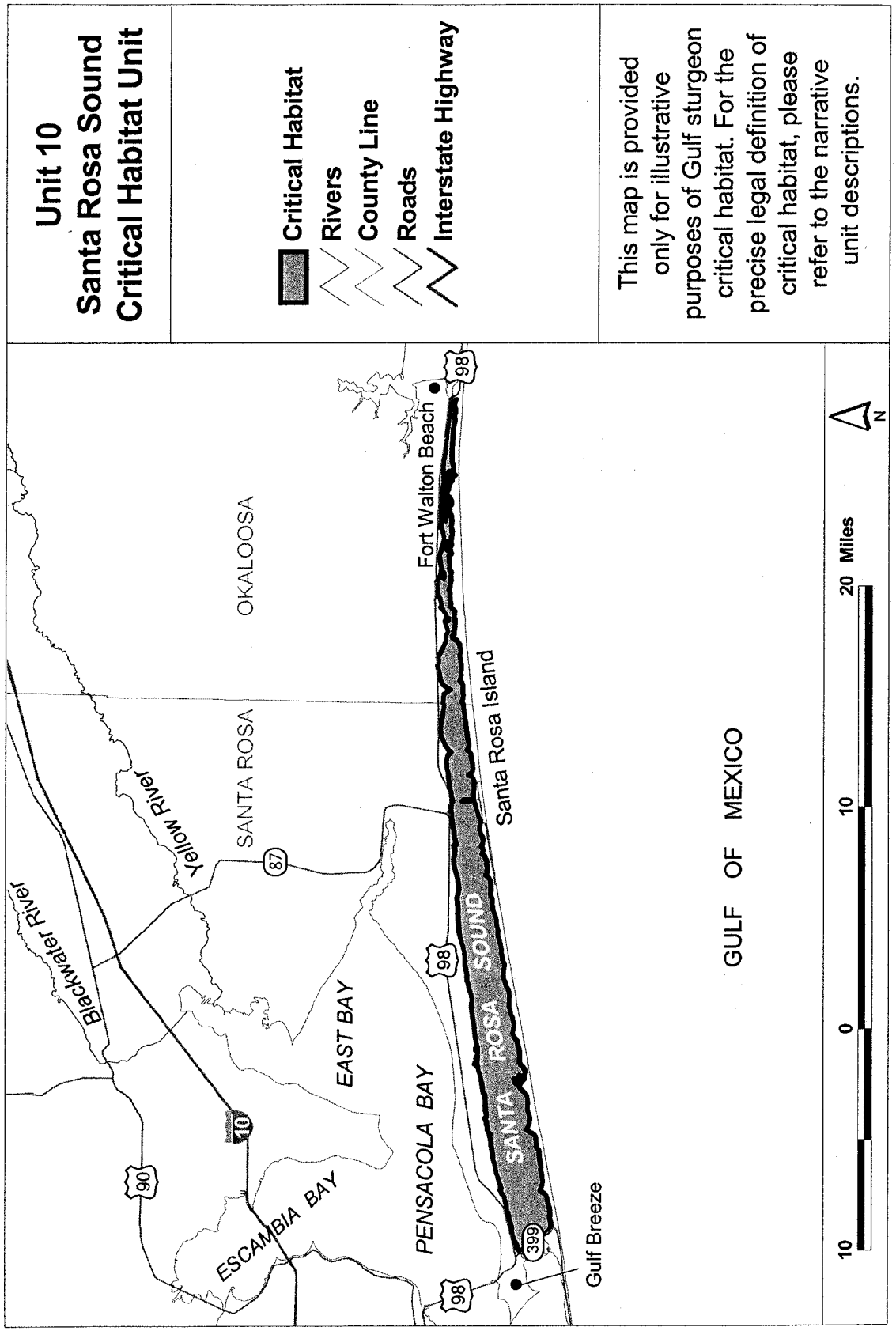
BILLING CODE 4310–55–C

(c) *Unit 10: Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, FL.*

(1) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, FL. The eastern boundary is the U.S. Highway 98 bridge in Fort Walton Beach, FL. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(2) A map of Unit 10 follows:

BILLING CODE 4310–55–P



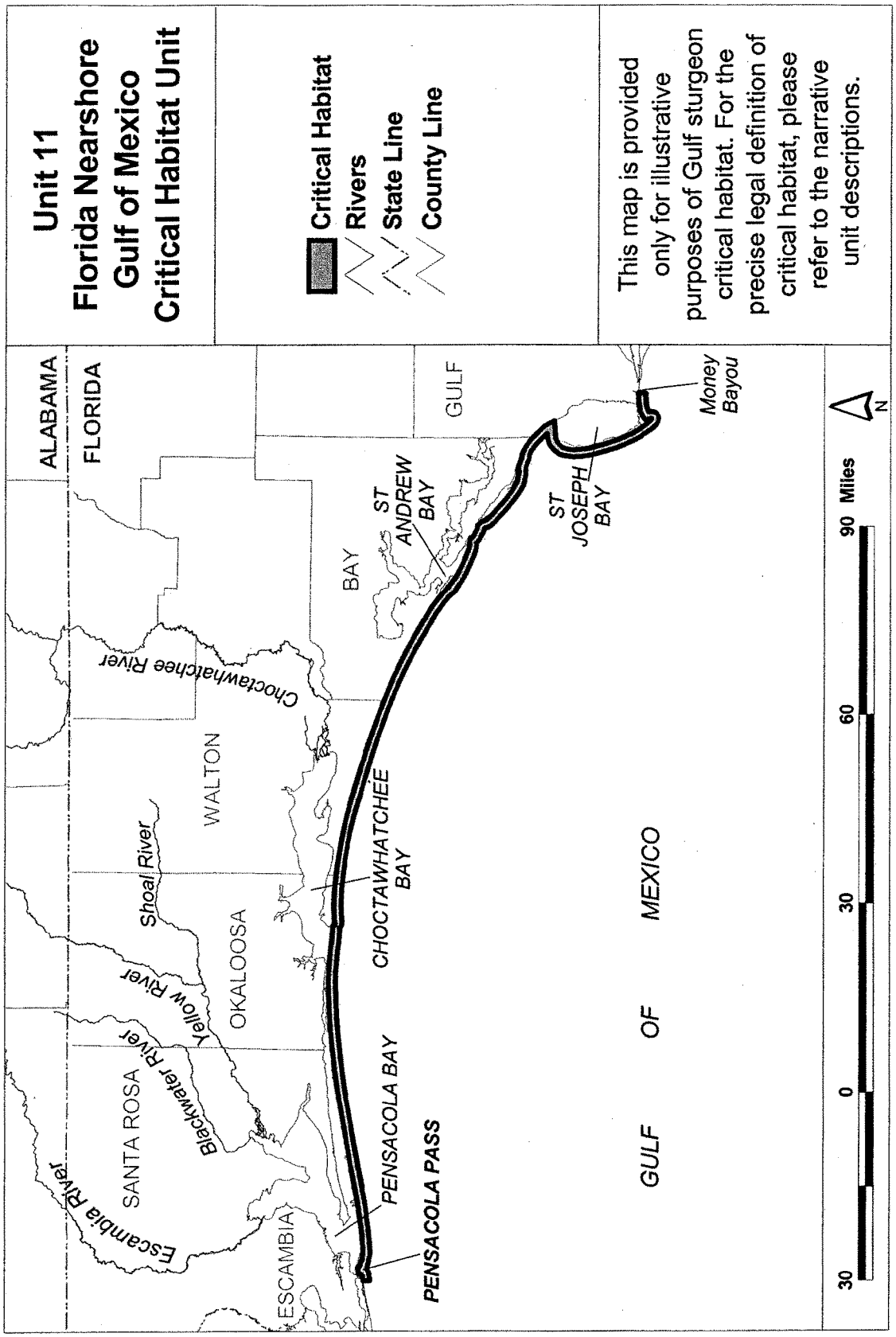
BILLING CODE 4310–55–C

(d) *Unit 11: Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties, FL.*

(1) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′ W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a)–(g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′ W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(2) A map of Unit 11 follows:

BILLING CODE 4310–55–P



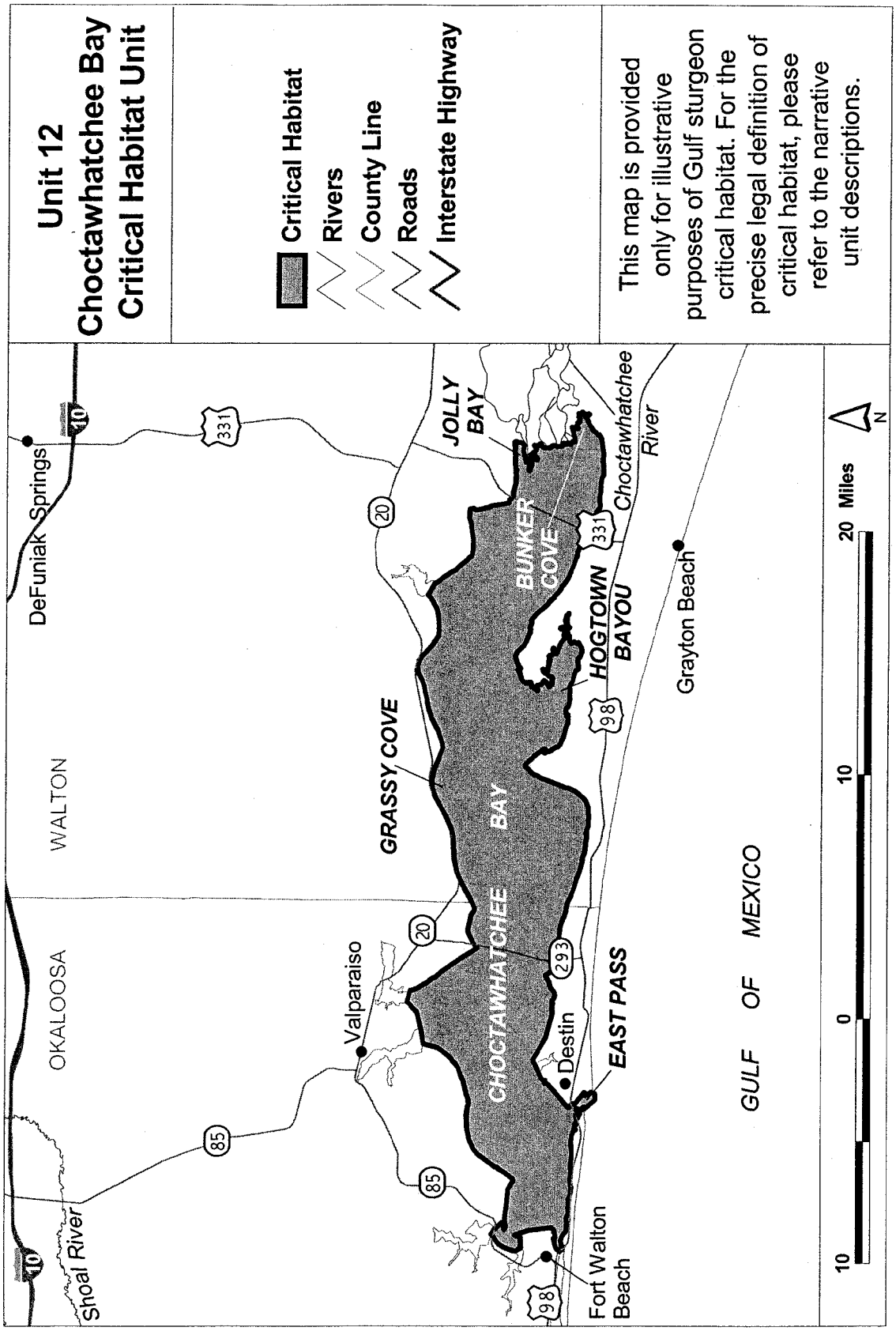
BILLING CODE 4310–55–C

(e) *Unit 12: Choctawhatchee Bay in Okaloosa and Walton Counties, FL.*

(1) Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the U.S. Highway 98 bridge at Fort Walton Beach, FL. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810 (f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(2) A map of Unit 12 follows:

BILLING CODE 4310–55–P



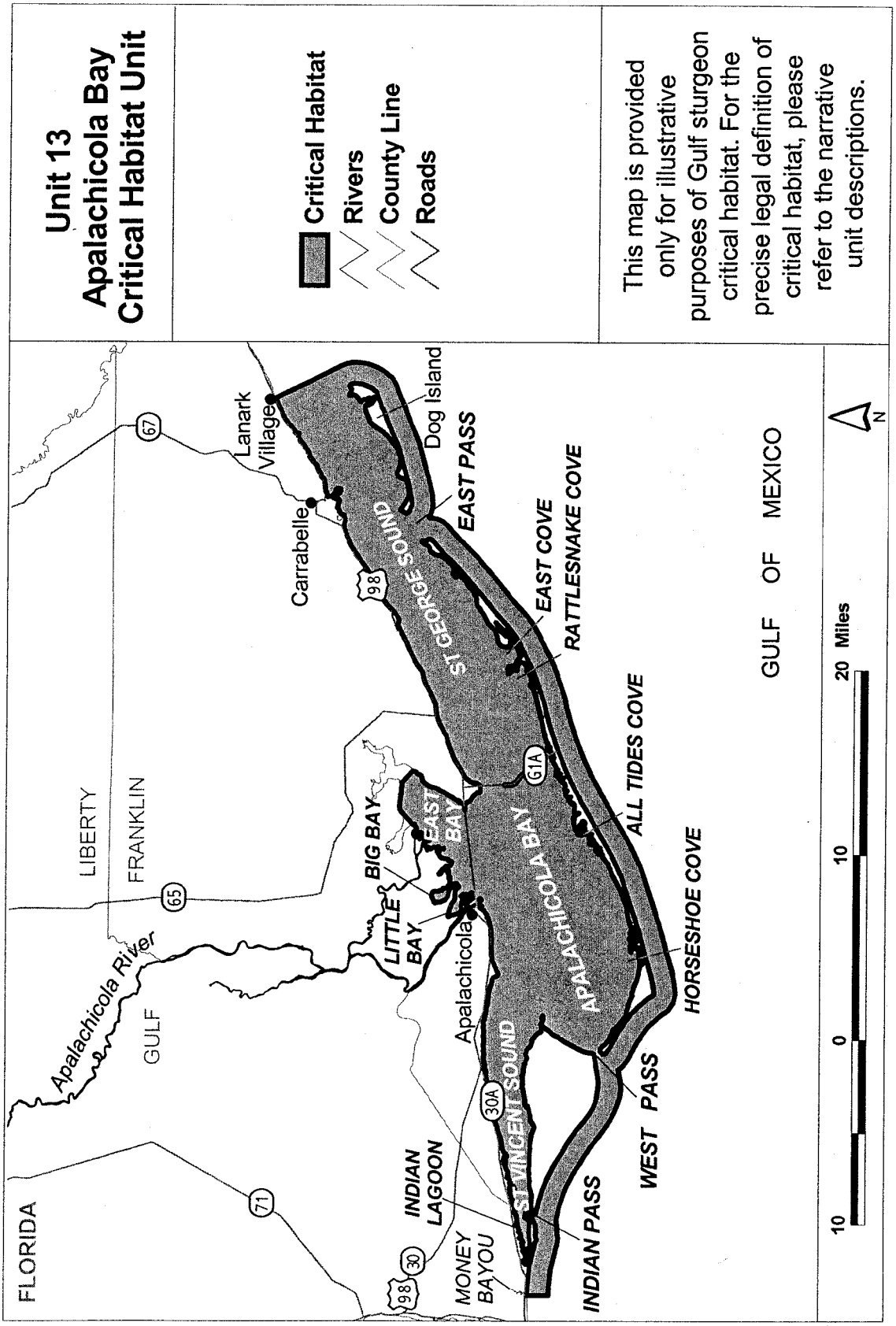
BILLING CODE 4310–55–C

(f) *Unit 13: Apalachicola Bay in Gulf and Franklin County, FL.*

(1) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e)–(h)). The western boundary is the line of longitude 85°17.0′ W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′ N, 84°35.0′ W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′ N, 84°33.2′ W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(2) A map of Unit 13 follows:

BILLING CODE 4310–55–P



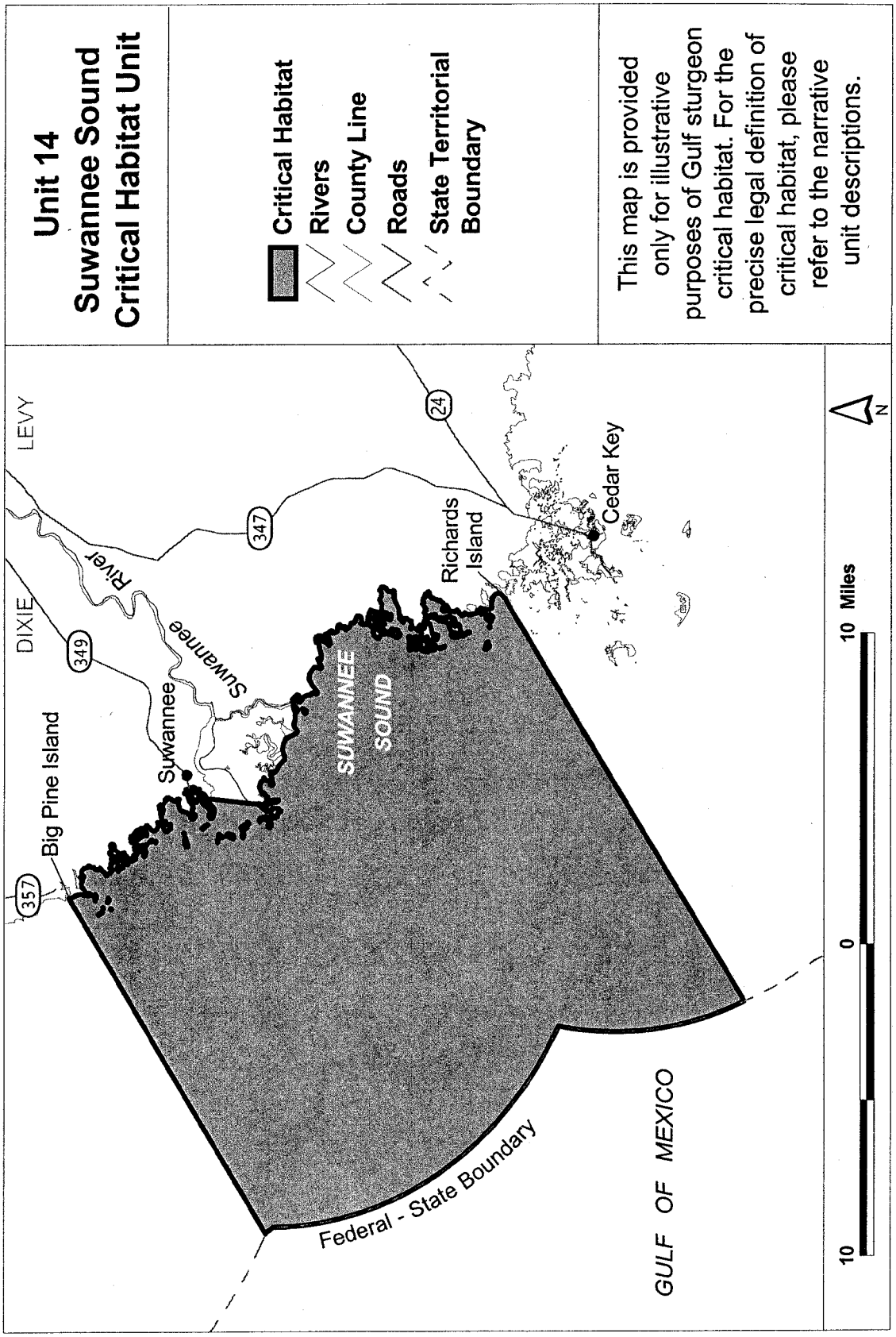
BILLING CODE 4310–55–C

(g) *Unit 14: Suwannee Sound in Dixie and Levy Counties, FL.*

(1) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′ N, 83°12′ W) to the Federal-State boundary at 29°17′ N, 83°21′ W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04′ W, 29°11′ N) to the Federal-State boundary at 83°15′ W, 29°04′ N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(2) A map of Unit 14 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(h) The river reaches within Units 1 to 7 proposed as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Dated: May 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: May 24, 2002.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–13620 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
June 6, 2002

Part III

Department of Education

Privacy Act of 1974; System of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Elementary and Secondary Education, School Improvement Programs, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, (Privacy Act) the Department of Education (the Department) publishes this notice of a new system of records entitled ''Native Hawaiian Education Council (18–14–03).'' The system will contain information on individuals who have been nominated and are interested in serving on the Native Hawaiian Education Council. The information maintained in the system of records entitled ''Native Hawaiian Education Council'' will consist of one or more of the following: Name, title, sex, place and date of birth, home address, business address, organizational affiliation, phone numbers, fax numbers, e-mail addresses, degrees held, general educational background, ethnic background, resume, curriculum vitae, previous or current membership on the Native Hawaiian Education Council, source who recommended the individual for membership on the council, and miscellaneous correspondence. The information that will form the new system of records will be collected through various sources, including telephone, written, and e-mail inquiries, as well as written requests to be included with letters of recommendation describing the qualifications of those individuals for service on the Native Hawaiian Education Council, and addresses and telephone numbers of those individuals. The information will be used to fulfill the requirement outlined in section 7204 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before July 8, 2002.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 31, 2002. This new system of records will become effective at the later date of— (1) the expiration of the 40-day period for OMB review on July 10, 2002, or (2) July 8, 2002, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Lynn Thomas, Program Officer, Native Hawaiian Education Program, Office of Elementary and Secondary Education, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Federal Building 6, Room 3C126, Washington, DC 20202–4160. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Native Hawaiian Education Council'' in the subject line of your electronic comment.

During and after the comment period, you may inspect all comments about this notice in room 3C126, 400 Maryland Avenue, SW., Federal Building 6, Washington, DC, between the hours of 8 a.m. and 4:30 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 notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Lynn Thomas. Telephone: (202) 260–1541. If you use a telecommunications 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 alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records managed by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new system of records.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. 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 the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: May 31, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Office of Elementary and Secondary Education of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–14–03

SYSTEM NAME:

Native Hawaiian Education Council Membership.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C126, Washington, DC 20202–6140.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are presently members of or are being considered for membership on the Native Hawaiian Education Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of one or more of the following: Name, title, sex, place and date of birth, home address, business address, organizational affiliation, phone numbers, fax numbers, e-mail addresses, degrees held, general educational background, ethnic background, resume, curriculum vitae, previous or current membership on the Native Hawaiian Education Council, source who recommended the individual for membership on the advisory council, and miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7204 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

PURPOSE(S):

To establish a Native Hawaiian Education Council to help coordinate the educational and related services available to Native Hawaiians, including programs receiving funding under the Native Hawaiian Education Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(2) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(3) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research that is compatible with the purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research that is compatible with the purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(4) *Congressional Member Disclosure.* The Department may disclose records to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* In the event that the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining their advice.

(6) *Disclosure to the Department of Justice.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy filed in file cabinets and on personal computers.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

Direct access to records is restricted to authorized personnel through locked files, rooms, and buildings, as well as building pass and security guard sign-in systems. Furthermore, the designated individuals' access to personal computers, the network, and the system of records will require personal identifiers and unique passwords, which will be periodically changed to prevent unauthorized access.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS), Part 5 and the National Archives and Records Administration's General Records Schedules (GRS) 16, item 8.

SYSTEM MANAGER(S) AND ADDRESS:

Native Hawaiian Program Manager, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E126, Washington, DC 20202–6140.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this

system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.7, including proof of identity. You may present your request in person at any of the locations identified for this system of records or address your request to the system manager at the following address: School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E126, Washington, DC 20202–6140.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. These access procedures are in accordance with Department regulations (34 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures, reasonably identify the record, and specify the information to be contested. Your request must meet the regulatory requirements of 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records will be obtained from the individuals, references, recommendations, private organizations, Members of Congress, and other government sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–14126 Filed 6–5–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
June 6, 2002

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The silvery minnow presently occurs only in the Rio Grande from Cochiti Dam, Sandoval County, downstream to the headwaters of Elephant Butte Reservoir, Sierra County, New Mexico. We propose to designate critical habitat within this last remaining portion of the occupied range in the middle Rio Grande (Cochiti Dam to Elephant Butte Dam) in New Mexico. The proposed critical habitat designation defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 91.4 meters (300 feet) of riparian zone adjacent to each side of the middle Rio Grande. We request data and comments from the public and all interested parties on all aspects of this proposed rule, including data on economic and other relevant impacts of the designation and the two areas that are not proposed as critical habitat. A draft economic analysis, which examines primarily economic impacts of this proposed rule, has been prepared and is also available for review and comments. This publication also provides notice of the availability of the draft economic analysis and the draft EIS for this proposed rule. We invite all interested parties to submit comments on these draft documents and this proposed rule.

DATES: *Comments.* We will consider all comments on the proposed rule, draft economic analysis, and the draft EIS received from interested parties by September 4, 2002.

Public Hearings. We will also hold two public hearings to receive comments from the public. The public hearings will be held in Socorro and Albuquerque, New Mexico, on June 25 and 26, respectively.

ADDRESSES: 1. Send your comments on this proposed rule, the draft economic analysis, and draft EIS to the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or through the Internet to *R2FWE_AL@fws.gov.* You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. You may obtain copies of the proposed rule, the draft economic analysis, or the draft EIS from the above address or by calling 505/346–2525. All documents are also available from our website at *http://ifw2es.fws.gov/Library/.*

2. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office (see address above).

3. We will hold public hearings in Socorro, NM, on June 25, 2002; and in Albuquerque, NM, on June 26, 2002 at the following locations:

- Socorro, NM: New Mexico Institute for Mining and Technology, Macey Center, 801 Leroy Place, Socorro, New Mexico, on June 25, 2002, from 6 to 9 p.m.
- Albuquerque, NM: Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico, on June 26, 2002, from 6 to 9 p.m.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** above); phone: 505–346–2525.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, TX. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 90 millimeters (mm) (3.5 inches (in)) in total length (Sublette *et al.* 1990). Its dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail. The fish is silver with emerald reflections. Its belly is silvery white, fins are plain, and barbels are absent (Sublette *et al.* 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Española, NM, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980). The silvery minnow is completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir and upstream of Cochiti Reservoir (Bestgen and Platania 1991). The current distribution of the silvery minnow is limited to the Rio Grande between Cochiti Dam and Elephant Butte Reservoir. Throughout much of its historic range, decline of the silvery minnow has been attributed to modification of the flow regime (hydrological pattern of flows that vary seasonally in magnitude and duration, depending on annual precipitation patterns such as runoff from snowmelt) and channel drying because of impoundments, water diversion for agriculture, stream channelization, and perhaps both interactions with non-native fish and decreasing water quality (Cook *et al.* 1992; Bestgen and Platania 1991, Service 1999; Buhl 2001).

It is important to note that much of the species' life history information detailed below comes from studies conducted within the middle Rio Grande, the current range of the minnow. Nevertheless, we believe that our determinations for other areas outside of the middle Rio Grande, but within the historical range of the silvery minnow, are consistent with the data collected to date on the species' ecological requirements (e.g., Service 1999).

The role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River is uncertain; however, the establishment of the plains minnow coincided with the disappearance of the silvery minnow (Bestgen and Platania 1991; Cook *et al.* 1992). It is believed the non-native plains minnow was introduced into the Pecos drainage prior to 1964 (Cook *et al.* 1992), and was probably the result of the release of ''bait minnows'' that were collected from the Arkansas River drainage. It is unclear, however, if populations of the native silvery minnow were depleted prior to the introduction of the plains minnow, or if the reduction and extirpation of the silvery minnow was a consequence of the interactions of the two species (C. Hoagstrom, U.S. Fish and Wildlife Service, pers. comm. 2001). One theory is that the plains minnow may be more tolerant of modified habitats and,

therefore, was able to replace the silvery minnow in the degraded reaches of the Pecos River. Nevertheless, the plains minnow has experienced population declines within its native range from highly variable water levels, unstable streambeds, and fluctuating water temperatures (Cross *et al.* 1985 cited in Taylor and Miller 1990). Although the interactions (e.g., hybridization or competition) between the silvery minnow and the introduced plains minnow are believed by some to be one of the primary causes for the extirpation of the silvery minnow in the Pecos River, this hypothesis is unsubstantiated (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). Currently, New Mexico State University is conducting research on the plains minnow and silvery minnow to determine if the two species hybridize. Preliminary results of this research should be available in summer 2002. It is important to note that, within its native range, the plains minnow is sympatric (occurs at the same localities) with other species of *Hybognathus.* However, they are segregated ecologically (i.e., the plains minnow is found in the main river channel where the substrate is predominantly sand, whereas the western silvery minnow (*Hybognathus argyritis*) predominates backwaters and protected areas with little to no current and sand or silt substrate) (Pflieger 1997). Consequently, if the silvery minnow and plains minnow do not hybridize, they may be ecologically segregated and able to co-exist.

The plains minnow and silvery minnow appear to have little in the way of behavioral or physiological isolating mechanisms and may hybridize (Cook *et al.* 1992); yet the combined effects of habitat degradation (i.e., modification of the flow regime, channel drying, water diversion, and stream channelization) may be a more likely explanation for the silvery minnow's extirpation from the Pecos River (Bestgen and Platania 1991; C. Hoagstrom, pers. comm. 2001). We acknowledge that there are no conclusive data to substantiate any reasons for extirpation of the silvery minnow from the Pecos River.

The silvery minnow has also been extirpated from the lower Rio Grande, including the Big Bend National Park area (Hubbs *et al.* 1977; Bestgen and Platania 1991). Reasons for the species' extirpation in the lower Rio Grande are also uncertain. The last documented collection of a silvery minnow in the Big Bend area was 1961, but reexamination of that specimen revealed it was a plains minnow (Bestgen and Propst 1996). Therefore, the last silvery minnow from the lower Rio Grande was apparently collected in the late 1950s (Trevino-Robinson 1959; Hubbs *et al.* 1977; Edwards and Contreras-Balderas 1991).

Decline of the species in the middle Rio Grande probably began in 1916 when the gates at Elephant Butte Dam were closed. Construction of the dam signaled the beginning of an era of mainstem Rio Grande dam construction that resulted in five major mainstem dams within the silvery minnow's historic range (Shupe and Williams 1988). These dams allowed manipulation and diversion of the flow of the river. Often this manipulation severely altered the flow regime and likely precipitated the decline of the silvery minnow (Bestgen and Platania 1991). Concurrent with construction of the mainstem dams was an increase in the abundance of non-native fish as these species were stocked into the reservoirs created by the dams (e.g., Cochiti Reservoir) (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish fauna (Propst *et al.* 1987; Propst 1999).

Development of agriculture and the growth of cities within the historic range of the silvery minnow resulted in a decrease in the quality of river water through municipal and agricultural run-off (i.e., sewage and pesticides) that may have also adversely affected the range and distribution of the silvery minnow. Historically there were four other small native fish species (speckled chub (*Macrohybopsis aestivalis*); Rio Grande shiner (*Notropis jemezanus*); phantom shiner (*Notropis orca*); and Rio Grande bluntnose shiner (*Notropis simus simus*)) within the middle Rio Grande that had similar reproductive attributes, but these species are now either extinct or extirpated (Platania 1991). The silvery minnow is a pelagic spawning species; i.e. its eggs flow in the water column. The silvery minnow is the only surviving small native pelagic spawning minnow in the middle Rio Grande and its range has been reduced to only 5 percent of its historic extent. Although the silvery minnow is a hearty fish, capable of withstanding many of the natural stresses of the desert aquatic environment, the majority of the individual silvery minnows live only one year (Bestgen and Platania 1991). Thus, a successful annual spawn is key to the survival of the species (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001). The silvery minnow's range has been so greatly restricted, the species is extremely vulnerable to a single catastrophic event, such as a prolonged period of low or no flow (i.e., the loss of all surface water) (59 FR 36988; Dudley and Platania 2001).

The various life history stages of the silvery minnow require shallow waters with a sandy and silty substrate that is generally associated with a meandering river that includes sidebars, oxbows, and backwaters (C. Hoagstrom, pers. comm, 2001; Bestgen and Platania 1991; Platania 1991). However, physical modifications to the Rio Grande over the last century—including the construction of dams, levees, and channelization of the mainstem—have altered much of the habitat that is necessary for the species to persist (Service 1999). Channelization has straightened and shortened mainstem river reaches; increased the velocity of the current; and altered riparian vegetation, instream cover, and substrate composition (U.S. Bureau of Reclamation (BOR) 2001a).

In the middle Rio Grande, the spring runoff coincides with and may trigger the silvery minnow's spawn (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001). The semi-buoyant (floating) eggs that are produced drift downstream in the water column (Smith 1999; Dudley and Platania 2001) (see ''Primary Constituent Elements'' section of this proposed rule for further information on spawning). However, it is believed that diversion dams act as instream barriers and prevent silvery minnows from movement upstream after hatching (Service 2001b; Dudley and Platania 2001; 2002). In fact, the continued downstream displacement and decline of the silvery minnow in the middle Rio Grande is well documented (Dudley and Platania 2001).

During the irrigation season (approximately March 1 to October 31 of each year) in the middle Rio Grande, silvery minnow often become stranded in the diversion channels (or irrigation ditches), where they are unlikely to survive (Smith 1999, Lang and Altenbach 1994). For example, when the irrigation water in the diversion channels is used on agricultural fields, the possibility for survival of silvery minnows in the irrigation return flows (excess irrigation water that flows from agricultural fields and is eventually returned to the river) is low, because they perish in canals due to unsuitable habitat, dewatering, or predation (Lang and Altenbach 1994). Unscreened diversion dams also entrain (trap) silvery minnow fry (fish that have recently emerged from eggs) and semi-buoyant eggs (Smith 1998; 1999). However, some irrigation water is returned to the river via irrigation wasteways in the reach of the middle Rio Grande from the Isleta Diversion

Dam to the San Acacia Diversion Dam (Isleta reach), which helps sustain flow in certain segments of this reach. Nevertheless, we do not believe these riverside drains offer suitable refugia or are useful for recovery of the silvery minnow.

In the middle Rio Grande, perhaps even more problematic for the silvery minnow are drought years during the irrigation season when there may be little supplemental water (water that is used to augment river flows) available and when most or all of the water in the middle Rio Grande may be diverted into the irrigation channels (e.g., see Dudley and Platania 2001) or otherwise consumed. Compounding this problem is stream bed aggradation (i.e., the river bottom is rising due to sedimentation) below San Acacia, NM, where the bed of the river is now perched above the bed of the low flow conveyance channel (LFCC), which is immediately adjacent and parallel to the river channel. Because of this physical configuration, waters in the mainstem of the river are drained from the river bed into the LFCC. The LFCC parallels the Rio Grande for approximately 121 kilometers (km) (75 miles (mi)) and was designed to expedite delivery of water to Elephant Butte Reservoir, pursuant to the Rio Grande Compact of 1939. The LFCC diverted water from the Rio Grande from 1959 to 1985. The LFCC was built to more efficiently deliver water to Elephant Butte Reservoir during low-flow conditions and has the capacity to take approximately 2,000 cubic feet per second (cfs) of the river's flow, via gravity. If natural river flow is 2,000 cfs or less, the LFCC can dewater the Rio Grande from its heading at the San Acacia Diversion Dam south to Elephant Butte Reservoir.

However, the LFCC has not been fully operational since 1985 because of outfall problems (e.g., stream bed aggradation) at Elephant Butte Reservoir. Even without water diversion into the LFCC, seepage from the river to the LFCC is occurring and causing some loss of surface flows in the river channel (BOR 2001a). In effect, water is drained from the Rio Grande into the LFCC and conveyed to Elephant Butte Reservoir, thereby resulting in water losses in the reach from the San Acacia Diversion Dam to Elephant Butte Reservoir (San Acacia reach). During some years this can result in prolonged periods of low or no flow.

It is believed that, historically, the silvery minnow was able to withstand periods of drought primarily by retreating to pools and backwater refugia, and swimming upstream to repopulate upstream habitats (e.g., Deacon and Minckley 1974, J. Smith, U.S. Fish and Wildlife Service, pers. comm. 2001). It is also believed that after prolonged periods of low or no flow the silvery minnow may have been able to repopulate downstream habitat the following year by the drift of eggs from upstream populations (Platania 1995). However, when the present-day middle Rio Grande dries and dams prevent upstream movement of the silvery minnow, they can become trapped in dewatered reaches and often die in isolated pools before the river becomes wetted again. The inability of the population to find adequate refugia during prolonged periods of low or no flow and to repopulate extirpated reaches creates a very unstable population (Service 2001b). In some isolated pools, Smith and Hoagstrom (1997) and Smith (1999) documented complete mortality of silvery minnows in the middle Rio Grande in both 1996 and 1997 during prolonged periods of low or no flow. These studies documented both the relative size of the isolated pool (i.e., estimated surface area and maximum depth) in relation to pool longevity (i.e., number of days the isolated pool existed) and the fish community within isolated pools. For example, isolated pools found during these conditions typically only lasted for about 48 hours before drying up completely (Smith 1999). Those isolated pools that persisted longer than 48 hours lost greater than 81 percent of their estimated surface area and greater than 26 percent of their maximum depth within 48 hours. Moreover, isolated pools receive no surface inflow; water temperatures increase; dissolved oxygen decreases; and depending on location, size, and duration of the prolonged periods of low or no flow, will usually result in the death of all fish (Tramer 1977; Mundahl 1990; Platania 1993b; Ostrand and Marks 2000; Ostrand and Wilde 2001). Therefore, when periods of low or no flow are longlasting (over 48 hours), complete mortality of silvery minnows in isolated pools can be expected.

Formation of isolated pools also increases the risk of predation of silvery minnows in drying habitats. Predators; primarily fish and birds, have been observed in high numbers in the middle Rio Grande, consuming fish in drying, isolated pools, where the fish become concentrated and are more vulnerable to predation (J. Smith, pers. comm. 2001).

The potential for prolonged periods of low or no flow on the middle Rio Grande becomes particularly significant for the silvery minnow below the San Acacia Diversion Dam, where approximately 95 percent of the only extant population lives. For example, in the river reach above (north of) the San Acacia Diversion Dam, return flows from irrigation and other activities are routed back into the mainstem of the river. At times, this can provide a fairly consistent flow in particular stretches of the Isleta reach. However, at the San Acacia Diversion Dam, once diversions are made (i.e., to irrigation canals, as well as seepage losses to the LFCC) the return flows continue in off-river channels (with a few exceptions at Brown's Arroyo and the 10-mile outfall of the LFCC) until they enter Elephant Butte Reservoir. Thus, unlike in the Isleta reach, the silvery minnow does not receive the benefit of irrigation return flows in the San Acacia reach.

Although we determine that a river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, Texas, and a river reach in the middle Pecos River, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, New Mexico, are essential to the conservation of the silvery minnow, these areas are not proposed for critical habitat designation because of our preliminary analysis under section 4(b)(2) (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule). The current proposal only includes the middle Rio Grande (Cochiti Dam to Elephant Butte Dam) in New Mexico, and no other reaches within the historical range of the silvery minnow. Therefore, we are only proposing to designate the river reaches currently occupied by the silvery minnow. This proposal is analyzed as the preferred alternative in the draft Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), which the Service was required to prepare under the court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* Civ. Nos. 99–870, 99–872, 99–1445M/RLP (Consolidated). The two reaches referenced above (i.e., middle Pecos River and lower Rio Grande) are also analyzed in the draft EIS. The Service must follow the procedures required by the Act, NEPA, and the Administrative Procedure Act. Therefore, we seek public comment on all reaches identified in this proposed rule as essential, including whether any of these or other areas should be excluded from the final designation pursuant to Section 4(b)(2). As required by law, we will consider all comments received on this proposed rule, the draft EIS, and the

draft economic analysis before making a final determination.

In accordance with the Recovery Plan, we have initiated a captive propagation program for the silvery minnow (Service 1999). We currently have silvery minnows housed at: (1) The Service's Dexter National Fish Hatchery and Technology Center; (2) the Service's Mora National Fish Hatchery and Technology Center; (3) the City of Albuquerque's Biological Park; (4) the U.S. Geological Survey Biological Resources Division's Yankton Laboratory; and (5) the New Mexico State University (J. Brooks, pers. comm., 2001). Progeny of these fish are being used to augment the middle Rio Grande silvery minnow population, but could also be used in future augmentation or reestablishment programs for the silvery minnow in other river reaches (J. Remshardt, New Mexico Fishery Resources Office, pers. comm. 2001). We have also salvaged and transplanted silvery minnows within the middle Rio Grande in recent years (Service 1996, 1998, 1999, 2000, 2001). For example, approximately 220,000 silvery minnow larvae and adults have been released (i.e., stockings from captive bred fish or translocated from downstream reaches) since May 1996 (J. Remshardt, U.S. Fish and Wildlife Service, pers. comm. 2001). Effectiveness of these releases is currently being investigated and will be useful for evaluating future efforts to repatriate the species.

If this proposed rule is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the ''destruction or adverse modification'' of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of the respondents, available for public review during normal business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law.

Previous Federal Action

We proposed to list the silvery minnow as an endangered species with critical habitat on March 1, 1993 (58 FR 11821). The comment period, originally scheduled to close on April 30, 1993, was extended to August 25, 1993 (58 FR 19220; April 13, 1993). This extension allowed us to conduct public hearings and to receive additional public comments. Public hearings were held in Albuquerque and Socorro, NM, on the evenings of June 2 and 3, 1993, respectively. After a review of all comments received in response to the proposed rule, we published the final rule to list the silvery minnow as endangered on July 20, 1994 (59 FR 36988).

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time the silvery minnow was listed, we found that critical habitat was not determinable because there was insufficient information to perform the required analyses of the impacts of the designation.

We contracted for an economic analysis of the proposed critical habitat designation in September 1994 and a draft analysis was prepared and provided to us on February 29, 1996. The draft document was then provided to all interested parties on April 26, 1996. That mailing included 164 individuals and agencies, all affected Pueblos in the valley, all county commissions within the occupied range of the species, and an additional 54 individuals who had attended the public hearings on the proposed listing and who had requested that they be included on our mailing list, particularly for the economic analysis. At that time, we notified the public that, because of a moratorium on final listing actions and determinations of critical habitat imposed by Public Law 104–6, no work would be conducted on the analysis or on the final decision concerning critical habitat. However, we solicited comments from the public and agencies on the document for use when such work resumed.

On April 26, 1996, the moratorium was lifted. Following the waiver of the moratorium, we reactivated the listing program that had been shut down for over a year and faced a backlog of 243 proposed species listings. In order to address that workload, we published, on May 16, 1996, our Listing Priority Guidance for the remainder of Fiscal Year 1996 (61 FR 24722). That guidance identified the designation of critical habitat as the lowest priority upon which we could expend limited funding and staff resources. Subsequent revisions of the guidance for Fiscal Years 1997 (December 5, 1996; 61 FR 64475) and for 1998/1999 (May 8, 1998; 63 FR 25502) retained critical habitat as the lowest priority for the listing program within the Service. Thus, no work resumed on the economic analysis due the low priority assigned to critical habitat designations.

On February 22, 1999, in *Forest Guardians* v. *Babbitt,* Civ. No. 97–0453 JC/DIS, the United States District Court for the District of New Mexico ordered us to publish a final determination with regard to critical habitat for the silvery minnow within 30 days. The deadline was subsequently extended by the court to June 23, 1999. On July 6, 1999, we published a final designation of critical habitat for the silvery minnow (64 FR 36274), pursuant to the court order.

On November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* Civ. Nos. 99–870, 99–872, 99–1445M/RLP (Consolidated), set aside the July 9, 1999, critical habitat designation and ordered us to issue both an EIS and a new proposed rule designating critical habitat for the silvery minnow. This proposed rule and the draft EIS are being issued pursuant to that court order.

On April 5, 2001, we mailed approximately 500 pre-proposal notification letters to the six Middle Rio Grande Indian Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta), various governmental agencies, interested individuals, and the New Mexico Congressional delegation. The letter informed them of our intent to prepare an EIS for the proposed designation of critical habitat for the silvery minnow and announced public scoping meetings pursuant to NEPA. On April 17, 23, 24, and 27, 2001, we held public scoping meetings in Albuquerque and Carlsbad, NM, Fort Stockton, TX, and Socorro, NM, respectively. We solicited oral and written comments and input. We were particularly interested in obtaining additional information on the status of the species or information concerning threats to the species. The comment period closed June 5, 2001. We received

approximately 40 comments during the EIS scoping process. During April 2001, we contracted with Industrial Economics Incorporated for an economic analysis and the Institute of Public Law at the University of New Mexico School of Law for an EIS on the proposed critical habitat designation. Following the closing of the scoping comment period, we outlined possible alternatives for the EIS. We held a meeting on September 12, 2001, to solicit input on the possible alternatives from the Rio Grande Silvery Minnow Recovery Team (Recovery Team) and other invited participants including individuals from the Carlsbad Irrigation District, Fort Sumner Irrigation District, the States of New Mexico and Texas, and potentially affected Pueblos and Tribes. Following this meeting, we sent letters to the Recovery Team and other invited participants, including Tribal entities, and resource agencies in New Mexico and Texas, to solicit any additional information—particularly biological, cultural, social, or economic data—that may be pertinent to the economic analysis or EIS. We received 10 comments from our requests for additional information. The information provided in the comment letters was fully considered in developing the alternatives that were analyzed in the draft EIS, which contains this proposed rule as our preferred alternative. We made these comments part of the administrative record for this rulemaking.

Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of the Service's endangered species program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Although a recovery plan is not a regulatory document (i.e., recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species based solely on a recovery plan), the information contained in the Rio Grande Silvery Minnow Recovery Plan (Recovery Plan) was considered in developing this proposed critical habitat designation.

On July 1, 1994, the Recovery Team was established by the Service pursuant to section 4(f)(2) of the Act and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species. Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). On July 8, 1999, we finalized the Recovery Plan (Service 1999), pursuant to section 4(f) of the Act.

The Recovery Plan recommends recovery goals for the silvery minnow, as well as procedures to better understand the biology of the species. The primary goals of the Recovery Plan are to: (1) Stabilize and enhance populations of silvery minnow and its habitat in the middle Rio Grande valley; and (2) reestablish the silvery minnow in at least two other areas of its historical range (Service 1999). The reasons for determining that these areas were necessary for recovery include: (1) Consideration of the biology of the species (i.e., few silvery minnows live more than 12 to 14 months, indicating the age 1 fish (e.g., all fish born in 2000 that remain alive in 2001 would be age 1 fish) are almost entirely responsible for perpetuation of the species); (2) the factors in each reach that may inhibit or enhance reestablishment and security of the species vary among areas; and (3) it is unlikely that any single event would simultaneously eliminate the silvery minnow from three geographic areas (Service 1999).

We have continued working with the Recovery Team since the Recovery Plan was finalized. We believe this proposed critical habitat designation and our conservation strategy (see ''Exclusions Under Section 4(b)(2) of the Act'' section below) are consistent with the Recovery Plan (Service 1999). The purpose of the Recovery Plan is to outline the research and data collection activities that will identify measures to ensure the conservation of the silvery minnow in the wild and to provide a roadmap that leads to the protection of habitat essential to its recovery. Therefore, we also believe this proposed critical habitat designation and our conservation strategy are consistent with the recommendations of Recovery Team members. Nevertheless, we will request that peer reviewers who are familiar with this species review the proposed rule.

The term ''conservation,'' as defined in section 3(3) of the Act and in 50 CFR 424.02(c), means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species). It is important to note that we utilized the recommendations in the Recovery Plan, consistent with this definition of conservation, to conclude that the middle Rio Grande proposed critical habitat unit and the middle Pecos River from Sumner Dam to Brantley Dam, NM (middle Pecos River), and the lower Rio Grande from the upstream boundary of Big Bend National Park downstream through the area designated as a wild and scenic river to the Terrell/Val Verde County line, TX (lower Rio Grande) are ''essential to the conservation of'' the silvery minnow. Although the middle Pecos River and the lower Rio Grande are not proposed as critical habitat units, we believe they are important for the recovery of the silvery minnow. Thus, we concur with the Recovery Plan that reestablishment of the silvery minnow within additional geographically distinct areas is necessary to ensure the minnow's survival and recovery (Service 1999). However, recovery is not achieved by designating critical habitat. The Act provides for other mechanisms that will provide for reestablishment of the minnow outside of the middle Rio Grande and the eventual recovery of the silvery minnow. We are not proposing critical habitat designation for the area on the middle Pecos River or the lower Rio Grande; we are proposing to designate only the middle Rio Grande as critical habitat. Our conservation strategy for this species and our rationale is discussed in the ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule below.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from a critical habitat designation when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. Our preliminary analysis of the following two areas: (1) The river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2)

the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX, finds that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them. Therefore, we are not proposing these areas as critical habitat.

As indicated in the ''Public Comments Solicited'' section of this rule, we are seeking comments on whether these areas should be designated as critical habitat. In making a final determination, we will consider all comments we receive on this proposed rule, the draft EIS, and the draft economic analysis.

(1) Benefits of Inclusion

The benefits of inclusion of the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM, would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. Historically, no consultations have occurred on the Pecos River for the silvery minnow since the area is not occupied. However, while critical habitat designation could provide some benefit to the silvery minnow, in fact, consultations are already occurring for another listed fish with similar requirements. The Pecos bluntnose shiner (*Notropis simus pecosensis*) was federally listed in 1987 and portions of the Pecos River are designated as critical habitat for the Pecos bluntnose shiner (52 FR 5295). As stated in the ''Criteria for Identifying Proposed Critical Habitat Units'' section of this rule, these fish species belong to the same guild of broadcast spawners with semi-buoyant eggs and also spawn during high flow events with eggs and larvae being distributed downstream (Bestgen *et al.* 1989). Therefore, flow regime operations in this reach that benefit the Pecos bluntnose shiner also provide benefits to habitat of the silvery minnow. We also believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat are compatible with the proposed primary constituent elements for the silvery minnow. Thus, we find that little additional benefit through section 7 would occur as a result of the overlap between habitat suitable for the silvery minnow and the Pecos bluntnose shiner listing and critical habitat designation.

In *Sierra Club* v. *Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State, and local governments; scientific organizations; and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and its habitat may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including the middle Pecos River because the final rule will identify all areas that are essential to the conservation of the silvery minnow, regardless of whether all of these areas are included in the regulatory designation. Consequently, we believe that the informational benefits will be provided to the middle Pecos River, regardless of whether this reach is designated as critical habitat.

The draft economic analysis recognizes that while consultations regarding the Pecos will occur without a silvery minnow critical habitat designation, those consultations would not consider the silvery minnow. However, due to the similar life history requirements of these species, we do not anticipate that the outcomes of such consultations would be altered. We recognize, as does the draft economic analysis, that the middle Pecos River area (as described above) covers about twice the length of the area designated for the Pecos bluntnose shiner. Historically, two formal consultations and two informal consultations occurred annually for the Pecos bluntnose shiner. The draft economic analysis assumes that twice as many consultations would occur if this area were designated as critical habitat for the silvery minnow, since the area would be doubled in size. However, the draft economic analysis also recognizes that this is likely an overstatement of the actual increase in consultations because consultations frequently occur on projects located outside of Pecos bluntnose shiner critical habitat, due to the interdependent nature of the river system and the presence of the species. Consequently, we do not believe that designating critical habitat within this river reach would provide additional benefits for the silvery minnow, because currently the activities that occur outside of critical habitat designated for the Pecos bluntnose shiner are also being consulted upon. We find little benefit to including this river reach in the proposed critical habitat for the silvery minnow due to the presence of the Pecos bluntnose shiner and its designated critical habitat, in the absence of the silvery minnow. Current and ongoing activities for the Pecos bluntnose shiner are compatible with those of the silvery minnow such that reestablishment of the silvery minnow in this stretch of river should not be precluded in the future. Thus, we determine that any additional benefit from a designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below in the ''Benefits of Exclusion'' section.

The benefits of inclusion of the river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX, would also result from the requirement under section 7 that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. However, as indicated in the draft economic analysis, we anticipate very little consultation activity within this area. The draft economic analysis (section 6.3.3) estimates that over the next 20 years there would be a total of 12 formal consultations and 6 informal consultations. The only Federal actions that we are aware of within the stream reach of the lower Rio Grande downstream of Big Bend National Park is the Big Bend National Park oversight and permitting authority for float trips, scientific research permits, environmental education, and law enforcement (R. Skiles, Big Bend National Park, pers. comm. 2001). Therefore, unless there are other types of Federal permitting or authorization within this area, private and State-owned lands would not be affected. Additional activities that were used to estimate the numbers of consultations for this area include: National Park management activities (e.g., pesticide application and fishing regulations), U.S. International Boundary and Water Commission channel maintenance activities, U.S. Fish and Wildlife Service (e.g., fire management plans, fish stocking), and Environmental Protection Agency, National Pollution Discharge Elimination System permitting for the Predsidio or Lajitas wastewater treatment facility. We find sufficient regulatory and protective conservation measures in place and believe there would be little benefit to a designation in this reach since this area is protected and managed by the National Park Service and the number of consultations expected to occur in this area are relatively low.

As above, we believe that heightened public awareness of a listed species and its habitat may facilitate conservation efforts. Nevertheless, we believe that there would be little additional

informational benefit gained from including the lower Rio Grande within designated critical habitat for the silvery minnow because we have identified in this proposed rule, and will identify in the final designation, those areas that we believe are essential to the conservation of the species. For these reasons, we determine that any additional benefit of designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below.

(2) Benefits of Exclusion

As discussed in the ''Recovery Plan'' section of this rule, the primary goals of the silvery minnow Recovery Plan are to: (1) Stabilize and enhance populations of the silvery minnow and its habitat in the middle Rio Grande valley; and (2) reestablish the silvery minnow in at least two other areas of its historical range (Service 1999). We believe that the best way to achieve the second recovery goal will be to use the authorities under section 10(j) of the Act. Consequently, we have developed a conservation strategy that we believe is consistent with the species' Recovery Plan. The conservation strategy is to reestablish the silvery minnow, under section 10(j) of the Act, within areas of its historical range, possibly including the river reach in the middle Pecos River and the river reach in the lower Rio Grande (both are described above). Since the silvery minnow is extirpated from these areas and natural repopulation is not possible without human assistance, use of a 10(j) rule is the appropriate tool to achieve this recovery objective. Nevertheless, any future recovery efforts, including repatriation of the species to areas of its historical range must be conducted in accordance with NEPA and the Act. An overview of the process to establish an experimental population under section 10(j) of the Act is described below.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are: (1) The population is geographically separate from non-experimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its probable historical range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, certain section 9 prohibitions (e.g., harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, based on the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR 17.81(d)).

The flexibility gained by establishment of a nonessential experimental population through section 10(j) would be of little value if there is a designation of critical habitat that overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii)(B) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

The second goal of the Recovery Plan is to reestablish the silvery minnow in areas of its historic range. We strongly believe that in order to achieve recovery for the silvery minnow we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing the minnow in the middle Pecos River and lower Rio Grande areas. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners. It is important for recovery of this species that we have the support of the public when we move towards meeting the second recovery goal. It is critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. The current population of silvery minnow in the middle Rio Grande is in an imperiled state making it extremely important that reestablishment into other portions of its historical range occur.

Nonessential experimental populations located within the National Park System are treated, for purposes of section 7 of the Act, as if they are listed as threatened (50 CFR 17.83(b)). Moreover, a nonessential experimental population established in the river reach in the lower Rio Grande downstream of the Big Bend National Park boundary (i.e., within the reach designated as a wild and scenic river) to the Terrell/Val Verde County line, TX, would also be treated, for purposes of section 7, as a threatened species because this area is a component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through

the National Park Service and is considered part of the National Park System (16 USC 1281(c)). These lands downstream of Big Bend National Park are owned by the State of Texas (Black Gap Wildlife Management Area) and approximately 12 to 15 private landowners. The National Park Service's management authority in the wild and scenic river designation currently extends 0.25 mi from the ordinary high water mark. For the past two years, Big Bend National Park has been working on a management plan for the ''outstanding remarkable values of the Rio Grande wild and scenic river'' (F. Deckert, Big Bend National Park, pers. comm. 2002). The development of the river management plan has involved stakeholders, including private landowners and the State of Texas. Throughout the stakeholder-based planning process, the Park has built trust among diverse and competing interests by encouraging open dialogue regarding various river management issues. If critical habitat were designated in this river reach, the introduction of additional Federal influence could jeopardize the trust and spirit of cooperation that has been established over the last several years (F. Deckert, pers. comm., 2002). The designation of critical habitat would be expected to adversely impact our, and possibly the Park's, working relationship with the State of Texas and private landowners, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion. Based on recent conversations with the National Park Service, their plan and draft EIS are expected to be completed in 2002, and finalized in 2003. We do not want to impede the development of a river management plan, which will likely provide for the management of this river reach consistent with the recovery needs of the silvery minnow. We believe this area has the greatest potential for repatriating the species within an area of its historical range and believe this river reach also has the greatest potential for developing an experimental population under section 10(j) of the Act. In order for an experimental population to be successful, the support of local stakeholders—including the National Park Service, the State of Texas, private landowners, and other potentially affected entities—is crucial. In light of this and the fact that the river management plan will soon be completed, we find that there would be significant benefits to excluding this river reach from designation of critical habitat.

On the middle Pecos River, we acknowledge that the New Mexico Interstate Stream Commission (NMISC) has been actively acquiring and leasing water rights to meet the State's delivery obligations to Texas as specified in the Pecos River Compact and pursuant to an Amended Decree entered by the U.S. Supreme Court. For example, between 1991 and 1999, $27.8 million was spent on the Pecos River water rights acquisition program. New Mexico faced a shortfall in its Pecos River Compact delivery obligations for the year 2001 and the possibility of priority administration, in which the State Engineer would order junior water rights holders not to use water. Given the tight water situation and the Compact delivery obligations, we believe that the flexibility of section 10(j) would be especially appropriate in the middle Pecos. Economic costs associated with endangered species management and critical habitat designation for the silvery minnow are discussed in the draft economic analysis. There are a variety of current and potential future costs associated with the ongoing water management and water reallocation on the middle Pecos River. The draft economic analysis and DEIS discuss and analyze these costs. We used the draft economic analysis and DEIS to make our preliminary determinations on the benefits of including or excluding areas from the proposed designation of critical habitat. Consequently, we invite comments on the economic and other relevant impacts of all of the areas we have determined are essential for the conservation of the silvery minnow.

In summary, we believe that the benefits of excluding the middle Pecos River and lower Rio Grande outweighs the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal due to the presence of the Pecos bluntnose shiner and its critical habitat in the middle Pecos River and the minimal number of estimated future consultations that are expected to occur within Big Bend National Park and the wild and scenic river designation that extends beyond the Park's boundaries. On the other hand, an exclusion will greatly benefit the overall recovery of the minnow by allowing us to move forward using the flexibility and greater public acceptance of section 10(j) of the Act to reestablish minnows in other portions of its historical range where it no longer occurs. This is likely the most important step in reaching recovery of this species and we believe that section 10(j), as opposed to a critical habitat designation, is the best tool to achieve this objective. Thus, we believe that an exclusion of these two areas outweighs any benefits that could be realized through a designation of critical habitat and we have not proposed these two areas for critical habitat designation.

The Pecos River and lower Rio Grande reaches were historically occupied but are currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The silvery minnow occupies less than five percent of its historic range and the likelihood of extinction from a catastrophic event is high because of its limited range (Hoagstrom and Brooks 2000, Service 1999). However, if critical habitat were designated in the middle Pecos River or lower Rio Grande, the likelihood of extinction of the species from the occupied reach of the middle Rio Grande would not decrease because critical habitat designation is not a process to reestablish additional populations within areas outside of the current known distribution. We believe that the exclusion of the river reaches of the middle Pecos River and the lower Rio Grande will not lead to the extinction of the species.

Exclusions Under Section 3(5)(A) Definition

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' As noted above, special management considerations or protection is a term that originates in the definition of critical habitat. Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. We use the following three criteria to determine if a plan provides adequate special management or protection: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan or agreement must provide assurances that the

conservation management strategies will be implemented; and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective (i.e., provide for periodic monitoring and revisions as necessary). If all of these criteria are met, then the area covered under the plan would no longer meet the definition of critical habitat. If any management plans are submitted during the open comment period, we will consider whether these plans provide adequate special management or protection for the species. We will use this information in determining which, if any, river reaches or portions of river reaches within the middle Rio Grande should not be included in the final designation of critical habitat for the silvery minnow.

Proposed Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat designation on the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities by identifying areas that are essential to the conservation of the species and alerting the public and land management agencies to the importance of an area to conservation. Within areas currently occupied by the species, critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Where no such Federal agency action is involved, critical habitat designation has no bearing on private landowners, State, or Tribal activities. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits. We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans under section 10 of the Act, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the silvery minnow, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan (Service 1999), data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the previous proposed and final rule, draft economic analysis, and environmental assessment. This proposed rule constitutes our best assessment of areas needed for the conservation of the silvery minnow. We must make this determination based on the information available at this time, and we are not allowed to delay our decision until all information about the species and its habitat are known, nor are we required to conduct further surveys or scientific studies on our own. *Southwest Center for Biological Diversity* v. *Babbitt,* 215 F.3d 58 (D.C. Cir. 2000). We have emphasized areas known to be occupied by the silvery minnow and described other stream reaches that were identified in the Recovery Plan and we believe are important for possible repatriation and recovery (Service 1999).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat designations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and, within areas currently occupied by the species, that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

Diverse habitats are used by the various life-history stages of the silvery minnow. The following discussion summarizes the biological requirements of the silvery minnow relevant to identifying the primary constituent elements of its critical habitat.

The silvery minnow historically inhabited the portions of the wide, shallow rivers and larger streams of the Rio Grande basin, predominantly the Rio Grande and the Pecos River (Bestgen and Platania 1991). Adults were common in shallow and braided runs over sand substrate, and almost never occurred in habitats with bottoms of gravel or cobble, while young-of-year fish (less than 1 year old) occupy shallow, low-velocity backwaters with sand-silt substrates (Dudley and Platania 1997; Platania and Dudley

1997; Platania 1991; Remshardt *et al.* 2001). Young-of-year silvery minnows are infrequently found at the same time in the same habitat as adults. Stream reaches dominated by straight, narrow, incised (deep) channels with rapid flows are not typically occupied by the silvery minnow (Bestgen and Platania 1991).

The habitats most often occupied by silvery minnow were characterized by low (<20 cm) to moderate depths (31 to 40 cm), little (<10 cm/s) to moderate (11 to 30 cm/s) water velocity, and silt and sand substrata (Dudley and Platania 1997; Remshardt *et al.* 2001). It is believed that silvery minnow select debris piles, pools, and backwaters, as habitat with main channel runs generally being avoided (Dudley and Platania 1997).

The silvery minnow is believed to be a generalized forager, feeding upon items suspended in the water column and items lying on the substrate (e.g., plankton, algae, diatoms) (Sublette *et al.* 1990; Dudley and Platania 1997; Service 1999). The silvery minnow's elongated and coiled gastrointestinal tract suggests that detritus (partially decomposed plant or animal matter), including sand and silt, is scraped from the river bottom (Sublette *et al.* 1990). Other species of *Hybognathus* have similar food habits, consuming rich organic ooze and detritus found in silt or mud substrates (Pflieger 1997).

The silvery minnow is a pelagic spawner, with each female capable of producing an average of 3,000 semi-buoyant, non-adhesive eggs during a spawning event (Platania 1995; Platania and Altenbach 1998). The collection of eggs in the middle of May, late May, early June, and late June suggest a contracted spawning period in response to a spring runoff or spike (increase in flow that occurs when winter snows melt) (Service 1999; BOR 2001a). However, the peak of egg production appears to occur in mid-May (Smith 1998, 1999). If the spring spike occurs at the wrong time or is reduced, then silvery minnow reproduction could be impacted. It is unknown if the silvery minnow spawns multiple times during the summer, although this behavior has been documented in other species of *Hybognathus* in other drainages (Lehtinen and Layzer 1988, Taylor and Miller 1990).

Platania (1995, 2000) found that early development and hatching of eggs is correlated with water temperature. Silvery minnow eggs raised in 30°C water hatched in about 24 hours, while eggs reared in 20°C water hatched within 50 hours. Eggs were 1.6 mm (0.06 in) in size upon fertilization, but quickly swelled to 3 mm (0.12 in). Recently hatched larval fish are about 3.7 mm (0.15 in) in standard length and grow about 0.15 mm (0.005 in) in size per day during the larval stages. Eggs and larvae remain in the drift for 3 to 5 days, and may be transported from 216 to 359 km (134 to 223 mi) downstream depending on river flows and habitat conditions (e.g., debris piles, low velocity backwaters, etc.) (Platania and Altenbach 1998). About three days after hatching, the larvae begin moving to low velocity habitats where food (mainly phytoplankton and zooplankton) is abundant and predators are scarce. Because eggs and larvae can be swept downstream, where recruitment (individuals added to the breeding population) of fish may be poor in the current degraded condition of the middle Rio Grande (e.g., channelization, banks stabilization, levee construction, disruption of natural processes throughout the floodplain, etc.), adequate stream length appears to be an important determinant of reproductive success.

Platania (1995) indicated that the downstream transport of eggs and larvae of the silvery minnow over long distances may have been, historically, beneficial to the survival of their populations. This behavior could have promoted recolonization of reaches impacted during periods of natural drought (Platania 1995). Alternatively, in a natural functioning river system (e.g., a natural, unregulated flow regime), a variety of low-velocity refugia (e.g., oxbows, backwaters, etc.) would have been available for silvery minnow and lengthy downstream drift of eggs and larvae may not have been common (J. Brooks, U.S. Fish and Wildlife Service pers. comm., 2001). Currently, the release of floating silvery minnow eggs may replenish downstream reaches, but the presence of the diversion dams (Angostura, Isleta, and San Acacia Diversion Dams) prevents recolonization of upstream habitats (Platania 1995). As reaches are depleted upstream, and diversion structures prevent upstream movements, population decline of the species within stream reaches may occur through loss of connectivity (i.e., preventing upstream movement of fish). Silvery minnow, eggs, and larvae are also transported downstream to Elephant Butte Reservoir, where it is believed that survival of these fish is highly unlikely because of poor habitat, and, even more important, because of predation from reservoir fishes (Service 2001b). The population center (i.e., the stream reach that contains the majority of adult silvery minnows) is believed to have moved farther downstream over the last several years (Dudley and Platania 2001; 2002). For example, in 1997, it was estimated that 70 percent of the silvery minnow population was found in the reach below San Acacia Diversion Dam (Dudley and Platania 1997). Moreover, during surveys in 1999, over 95 percent of the silvery minnows captured occurred downstream of San Acacia Diversion Dam (Dudley and Platania 1999a, Smith and Jackson 2000). Probable reasons for this distribution include: (1) The spawning of buoyant eggs during the spring and early summer high flows, resulting in downstream transport of eggs and larval fish; (2) diversion dams that restrict or preclude the movement of fish into upstream reaches; and (3) reduction in the amount of available habitat due to the current degraded condition of some areas within the middle Rio Grande (e.g., channelization, streambed degradation, reduction in off-channel habitat, and the general narrowing and incising of the stream channel) (Platania 1998; Lagassee 1981; BOR 2001).

Most Great Plains streams are highly variable environments. Fish in these systems (e.g., the Rio Grande) are subjected to extremes in water temperatures, flow regimes, and overall water quality conditions (e.g., quantity of dissolved oxygen). Native fish in these streams often exhibit life history strategies and microhabitat preferences that enabled them to cope with these natural conditions. For example, Matthews and Maness (1979) reported that the synergistic (combined) effects of high temperature, low oxygen, and other stressors probably limit fishes in streams of the Great Plains.

The silvery minnow evolved in a highly variable ecosystem, and is likely more tolerant of elevated temperatures and low dissolved oxygen concentrations for short periods than other non-native species. Although little is known about the upper tolerance limits of the silvery minnow, when water quality conditions degrade, stress increases, and fish generally die (e.g., see Matthews and Maness 1979; Ostrand and Wilde 2001). Generally, it is believed that during periods of low flow or no flow, Great Plains fishes seek refugia in large isolated pools, backwater areas, or adjoining tributaries (Deacon and Minckley 1974; Matthews and Maness 1979). Fish in these refugia strive to survive until suitable flow conditions return and these areas reconnect with the main river channel. This pattern of retraction and recolonization of occupied areas in response to flow and other habitat

conditions is typical of fishes that endure harsh conditions of Great Plains rivers and streams (Deacon and Minckley 1974; Matthews and Maness 1979).

Localized reductions in abundance are not typically a concern where sufficient numbers of the species survive, because stream reaches can be recolonized when conditions improve. However, habitat conditions such as oxbows, backwaters, or other refugia that were historically present on the Rio Grande and Pecos River and were a component of natural population fluctuations (e.g., extirpation and recolonization) have been dramatically altered or lost (e.g., Bestgen and Platania 1991; Hoagstrom 2000; BOR 2001a, 2001b). Over the past several decades, the extent of areas in the Rio Grande and Pecos River that periodically lost flow has increased due to human alterations of the watersheds and stream channels and diversion of the streamflows (Service 1994).

Variation in stream flow (i.e., flow regime) strongly affects some stream fish (Schlosser 1985). For example, juvenile recruitment (that portion of the young-of-the-year fish that survive to adults and reproduce) of some stream fish is highly influenced by stable flow regimes (Schlosser 1985; Hoagstrom 2000). When sufficient flows persist and other habitat needs are met, then recruitment into the population is high. Silvery minnows and other Great Plains or desert fishes cannot currently survive when conditions lead to prolonged periods of low or no flow of long stretches of river (Hubbs 1974; Hoagstrom 2000). Fish mortality likely begins from degraded water quality (e.g., increasing temperatures, p.H., and decreasing dissolved oxygen) and loss of refuge habitat prior to prolonged periods of low or no flow (J. Brooks, pers. comm 2001; Ostrand and Wilde 2001). For instance, a reduction of stream flow reduces the amount of water available to protect against temperature oscillations, and high temperatures from reduced water flow frequently kill fish before prolonged periods of no flow occurs (Hubbs 1990).

It is also possible that fish may subsequently die from living under sub-optimal conditions or that their spawning activities may be significantly disrupted (Hubbs 1974; Platania 1993b). Such conditions are in part responsible for the current, precarious status of the silvery minnow. For example, management of water releases from reservoirs, evaporation, diversion dams, and irrigation water deliveries have resulted in dewatered habitat—causing direct mortality and isolated pools that cause silvery minnow mortality due to poor water quality (low dissolved oxygen, high water temperatures) and predation from other fish and predators (e.g., birds, raccoons etc.). Portions of the middle Rio Grande were dewatered in 1996 to 2001 (Service 2001b; J. Smith, pers. comm. 2001). In 1996, about 58 km (34 mi) out of the 90 km (56 mi) from the San Acacia Diversion Dam to Elephant Butte Reservoir was dewatered. In 1997, water flows ceased at the south boundary of the Bosque del Apache National Wildlife Refuge, resulting in dewatering 22.5 km (14 mi) of silvery minnow habitat. In 1998, the Rio Grande was discontinuous within the Bosque del Apache National Wildlife Refuge, dewatering about 32 km (20 mi) of habitat. In 1999, flows ceased about one mile upstream of the Bosque del Apache National Wildlife Refuge northern boundary, dewatering about 39 km (24 mi) of habitat. A similar event occurred in 2000, only not to the extent of the 1999 drying. In 2001, approximately 14 combined km (9 mi) of river dried, within the Bosque del Apache National Wildlife Refuge and south of San Marcial (Smith 2001). Because of recurring prolonged periods of low or no flow through multiple years, the status of the silvery minnow has declined (Dudley and Platania 2001; 2002).

We believe it is possible to manage the middle Rio Grande and Pecos River to avoid prolonged periods of low or no flow and provide sufficient flowing water during critical time periods, such as from May to October (Service 2001a, 2001b). For example, in a recent biological opinion we issued on the effects of actions associated with the U.S. Bureau of Reclamation's, U.S. Army Corps of Engineers'', and Non-Federal Entities' discretionary actions related to water management on the middle Rio Grande, NM, provided, among other elements of a reasonable and prudent alternative:

> river flow from Cochiti Dam to Elephant Butte Reservoir from October 31 to April 30 of each year, with a target flow of 50 cfs at the San Marcial Floodway gage. Flows will not drop below 40 cfs. From May 1 to June 15 of each year, provide a minimum flow of 50 cfs at the San Marcial Floodway gage. From June 16 to July 1 of each year, ramp down the flow to achieve 50 cfs over San Acacia Diversion Dam (Service 2001b).

A similar biological opinion on the effects on the Pecos bluntnose shiner of actions associated with the U.S. Bureau of Reclamation's discretionary actions related to water management on the Pecos River, in New Mexico, provided for target flows of 35 cfs at the Acme Gage (Service 2001a). We believe that by providing target flows, it may be possible to intensively manage and closely monitor the water in middle Rio Grande and Pecos River. For example, this was the case during the 2001 irrigation season on the middle Rio Grande in which the continued existence of the silvery minnow was not jeopardized (i.e., the implementation of the elements of the reasonable and prudent alternative) (Service 2001b).

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We did not identify quantitative estimates of specific minimum thresholds (e.g., minimum flows or depths), because we believe these estimates vary seasonally and annually, and by stream reach within the proposed critical habitat unit. Thus, we believe these thresholds are appropriately enumerated through section 7 consultations (e.g., see Service 2001b), which can be more easily changed if new information reveals effects to critical habitat in a manner or extent not previously considered (see 50 CFR 402.16(b)). We acknowledge that if thresholds were established as part of a critical habitat designation, they could be revised if new data became available (50 CFR 424.12(g)); however, the process of new rulemaking can take years (see 50 CFR 424.17), as opposed to months to reinitiate and complete a formal consultation (see 50 CFR 402.14). Formal consultation provides an up-to-date biological status of the species or critical habitat (i.e., environmental baseline) which is used to evaluate a proposed action during formal consultations. Consequently, we believe it is more prudent to pursue the establishment of specific thresholds through formal consultation.

This proposed rule does not explicitly state what might be included as special management for a particular river reach within the middle Rio Grande. We anticipate that special management actions will likely be developed as part of the section 7 consultation process. Special management might entail a suite of actions including: re-establishment of hydrologic connectivity within the floodplain, widening the river channel, or placement of woody debris or boulders within the river channel (J. Smith, pers. comm., 2001).

It is important to note that some areas within the middle Rio Grande proposed critical habitat unit have the potential for periods of low or no flow under certain conditions (e.g., see discussion above on middle Rio Grande). We recognize that the proposed critical

habitat designation specifically includes some areas that have lost flow periodically (Middle Rio Grande Conservancy District 1999; Scurlock and Johnson 2001; D. Coleman, U.S. Fish and Wildlife Service, pers. comm., 2001). It is difficult to describe the existing conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande. It is our belief that this stretch of river is likely to experience periods of low or no flow under certain conditions. However, it is important to note that we are not able to predict with certainty which areas within the middle Rio Grande will experience these conditions. We nevertheless believe this area is essential to the conservation of the silvery minnow because it likely serves as connecting corridors for fish movements between areas of sufficient flowing water (e.g., see Deacon and Minckley 1974; Eberle *et al.* 1993). Additionally, we believe this area is essential for the natural channel geomorphology (the topography of the river channel) to maintain or re-create habitat, such as pools, by removing or redistributing sediment during high flow events (e.g., see Simpson *et al.* 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we believe that the inclusion of an area that has the potential for periods of low or no flow as proposed critical habitat will ensure the long-term survival and recovery of silvery minnow. As such, we believe that the primary constituent elements as described in this proposed rule provide for a flow regime that allows for short periods of low or no flow. However, it is difficult to describe the existing conditions of this area (see above) and to define the primary constituent elements to reflect such a flow regime. Thus, we are soliciting comments or information related to the proposed designation of critical habitat in this area that may experience periods of no or low flow, and in particular the primary constituent elements and how they relate to the existing conditions (e.g., flow regime).

If this proposed rule is finalized, Federal agencies with discretion over actions related to water management that affect critical habitat will be required to consider critical habitat and possibly enter into consultation under section 7 of the Act. These consultations will evaluate whether any Federal discretionary actions destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. The adverse modification analysis will likely evaluate whether the adverse effect of prolonged periods of low or no flow is of sufficient magnitude (e.g., length of river) and duration that it would appreciably diminish the value of the critical habitat unit for the survival and recovery of the silvery minnow. For example, the effect of prolonged periods of low or no flow on the habitat quality (e.g., depth of pools, water temperature, pool size, etc.) and the extent of fish mortality is related to the duration of the event (Bestgen and Platania 1991). All of these factors will be analyzed under section 7 of the Act, if they are part of an action proposed by a Federal agency. Additionally, any Federal agency whose actions influence water quantity or quality in a way that may affect proposed critical habitat or the silvery minnow must enter into section 7 consultation with us. Still, these consultations cannot result in biological opinions that require actions that are outside an action agency's legal authority and jurisdiction (50 CFR 402.02).

We determined the primary constituent elements of critical habitat for the silvery minnow based on studies on their habitat and population biology including, but not limited to: Bestgen and Platania 1991; Service 1999; Dudley and Platania 1997; 2001; 2002; Platania and Altenbach 1998; Platania 1991, 2000; Service 2001; Smith 1998, 1999; Hoagstrom 2000; Remshardt *et al.* 2001. These primary constituent elements include:

1. A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to: backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity which are necessary for each of the particular silvery minnow life-history stages; e.g., the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow; and a relatively constant winter flow (November to February), in appropriate seasons;

2. The presence of low velocity habitat (including eddies created by debris piles, pools, or backwaters, or other refuge habitat (e.g., connected oxbows or braided channels)) within unimpounded stretches of flowing water of sufficient length (i.e., river miles) that provide a variation of habitats with a wide range of depth and velocities;

3. Substrates of predominantly sand or silt; and

4. Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1°C (35°F) and less than 30°C (85°F) and reduce degraded water quality conditions (decreased dissolved oxygen, increased pH, etc.).

We determined that these proposed primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The first primary constituent element provides water of sufficient flows to reduce the formation of isolated pools. We conclude this element is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying (loss of surface flow) of long stretches of river. Water is a necessary component for all silvery minnow life-history stages and provides for hydrologic connectivity to facilitate fish movement. The second primary constituent element provides habitat necessary for development and hatching of eggs and the survival of the silvery minnow from larvae to adult. Low velocity habitat provides food, shelter, and sites for reproduction, and are essential for the survival and reproduction of silvery minnow. The third primary constituent element provides appropriate silt and sand substrates (Dudley and Platania 1997; Remshardt *et al.* 2001), which we and other scientists conclude are important in creating and maintaining appropriate habitat and life requisites (e.g., food and cover). The final primary constituent element provides protection from degraded water quality conditions. We conclude that when water quality conditions degrade (e.g., increasing water temperatures, pH, decreasing dissolved oxygen, etc.), silvery minnows will likely be injured or die.

Criteria for Identifying Proposed Critical Habitat

The primary objective in designating critical habitat is to identify areas that are considered essential for the conservation of the species, and to highlight specific areas where management considerations should be given highest priority. In proposing critical habitat for the silvery minnow, we have reviewed the overall approach

to the conservation of the silvery minnow undertaken by the local, State, Tribal, and Federal agencies operating within the species' historical range since the species' listing in 1994, and the previous proposed (58 FR 11821) and final critical habitat rules (64 FR 36274). We have also outlined our conservation strategy to eventually recover the species (see ''Exclusions Under Section 4(b)(2) of the Act'' section above).

We also considered the features and steps necessary for recovery and habitat requirements described in the Recovery Plan (Service 1999), and information provided by our Fishery Resources Office in New Mexico, and other biologists, as well as utilized our own expertise. We also reviewed the biological opinion issued June 29, 2001, to the BOR and U.S. Army Corps of Engineers (Corps) for impacts to the silvery minnow from water operations in the middle Rio Grande (Service 2001b), the biological opinion issued to the BOR for discretionary actions related to water management on the Pecos River, in New Mexico (Service 2001a), and reviewed available information that pertains to the habitat requirements of this species, including material received during the initial public comment period on the proposed listing and designation, the information received following the provision of the draft economic analysis to the public on April 26, 1996, the comments and information provided during the 30-day comment period opened on April 7, 1999, including the public hearing, and the comments and information received during the 60-day comment period opened on April 5, 2001, for the notice of intent to prepare an EIS and public scoping meetings held on April 17, 23, 24, and 27, 2001 (April 7, 1999; 64 FR 16890).

Since the listing of the silvery minnow in 1994 (59 FR 36988), no progress has been made toward reestablishing this species within unoccupied areas (e.g., stream reaches on the middle Pecos, lower Rio Grande, etc.). Because the silvery minnow has been extirpated from these areas, Federal agencies have not consulted with us on how their discretionary actions may affect the silvery minnow. We conclude these areas (e.g., stream reaches on the middle Pecos and the lower Rio Grande) are essential to the conservation of the minnow, but we have not proposed them for designation of critical habitat (see discussion above).

For these reasons, this proposed critical habitat designation differs from the final critical habitat designation we made in 1999 (64 FR 36274), and which was subsequently set aside by court order. The differences also reflect the best scientific and commercial information analyzed in the context of the final Recovery Plan (see ''Recovery Plan'' discussion above) and our conservation strategy for this species. Although we could have proposed two additional critical habitat units to respond to the Recovery Plan's recommendation that additional areas are required to achieve recovery (Service 1999) (see ''Recovery Plan'' discussion above), we believe that the inclusion of these areas could hinder our future conservation strategy (see ''Exclusions Under Section 4(b)(2) of the Act'' section above) and actually impede recovery of the silvery minnow.

Recovery requires protection and enhancement of existing populations and reestablishment of populations in suitable areas of historical range. The Recovery Plan identifies, ''the necessity of reestablishing silvery minnow in portions of its historical range outside of the middle Rio Grande in New Mexico.'' The Recovery Plan identified potential areas for reestablishment of silvery minnow in certain stream reaches of the Rio Grande and Pecos River. The Recovery Plan also recommended a thorough analysis of the reestablishment potential of specific river reaches within the historical range of the silvery minnow.

Therefore, we have determined that one of the most important goals to be achieved toward the conservation of this species is the establishment of secure, self-reproducing populations in areas outside of the middle Rio Grande, but within the species' historical range (Service 1999). Thus, we have outlined our conservation strategy for the silvery minnow (see ''Exclusions Under Section 4(b)(2) of the Act'' section above). Because the species occupies less than five percent of its historical range and the likelihood of extinction from a catastrophic event is greatly increased (Hoagstrom and Brooks 2000, Service 1999), we believe that additional populations should be established within certain unoccupied reaches (i.e., areas outside of the current known distribution). Nevertheless, any future recovery efforts, including repatriation of the species to areas of its historical range must be conducted in accordance with NEPA and the Act.

The recent trend in the status of the silvery minnow has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Moreover, none of the threats affecting the silvery minnow have been eliminated since the fish was listed (59 FR 36988), and through the summer of 2000, its status declined (Dudley and Platania 2001). Although the 2001 population levels of silvery minnow in the middle Rio Grande were higher than those recorded in 2000, the known silvery minnow population within the middle Rio Grande has become fragmented and isolated and is vulnerable to those natural or manmade factors that might further reduce population size (Dudley and Platania 2001; 2002). Because there have been low spring peak flows in the Rio Grande in some recent years (e.g., such as in 2000), and a related decrease in spawning success of the silvery minnow, the population size of silvery minnow declined through the summer of 2000, but catch rates in June 2001 were higher than those observed in 2000 (Dudley and Platania 2001; 2002). We conclude the species' vulnerability to catastrophic events, such as prolonged periods of low or no flow, have increased since the species was listed as endangered in 1994 (59 FR 36988).

It is widely recognized that major efforts to repatriate the silvery minnow to large reaches of its historical habitat in the Rio Grande and Pecos River will not likely occur without either natural or induced changes in the river, including changes affecting the existing fish community, habitat restoration, and coordinated water management (e.g., see Service 1999). Nevertheless, we conclude that conservation and recovery of the silvery minnow requires habitat conditions that will facilitate population expansion or repatriation. As an example, we are currently involved in developing several efforts to assist in the conservation and recovery of the silvery minnow and other imperiled species (e.g., Federal and non-Federal efforts to create a middle Rio Grande Endangered Species Act Collaborative Program). Any future habitat restoration efforts conducted by us or other Federal agencies within the species' historical habitat will be analyzed through NEPA and will be conducted in accordance with the pertinent sections of the Act and Federal rulemaking procedures.

Habitat alteration and loss, and non-native competition, predation, and other effects are inextricably intertwined and have contributed substantially to the endangered status of the silvery minnow (Service 1999; Dudley and Platania 2001). Furthermore, habitat alteration has been a significant contributor to non-native fish invasion, competition, and adverse effects. In turn, non-native species have likely contributed significantly to the inability of native fish, such as the silvery minnow, to persist in altered environments (Hubbs

1990; Propst 1999). However, non-native fish species may have the potential to be removed or reduced to acceptable levels using a variety of control or management techniques. For example, the New Mexico State Game Commission recently passed a regulation limiting the species that can be used as baitfish in the Pecos River (New Mexico Department of Game and Fish 2000). As part of this proposed rule (see ''Public Comments Solicited'' section below) we are seeking further information regarding the role of unoccupied stream reaches within the historical range of the silvery minnow, including those reaches with non-native fish species (e.g., plains minnow) present or those reaches that have the potential for low or no flow events. We are particularly interested in assistance on how to describe the existing habitat (e.g., flow) conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande.

It is important to note that the mere presence of non-native aquatic species does not eliminate an area from being considered for designation as critical habitat. For example, the relationship between the introduction of the plains minnow and extirpation of the silvery minnow is unclear (see discussion above). Although the Recovery Plan suggested that the plains minnow would be the primary limiting factor precluding successful reestablishment of the silvery minnow to the Pecos River (Service 1999), we have little data from which to draw firm conclusions for the extirpation of the silvery minnow from the Pecos River. We recognize that any efforts to reestablish the silvery minnow to unoccupied stream reaches must fully analyze and consider a variety of habitat management techniques, including the control or management of non-native fish. Consequently, we invite comments or information relating to the status of the plains minnow in the Pecos River and this area not being proposed as critical habitat. We are especially interested in observations of related species of *Hybognathus* and any behavioral or reproductive mechanisms that might provide for ecological separation in areas where two or more species of *Hybognathus* co-occur.

Portions of the Pecos River include designated critical habitat for the Pecos bluntnose shiner (52 FR 5295). The Pecos bluntnose shiner critical habitat includes a 103 km (64 mi) reach of the Pecos River extending from a point 16 km (10 mi) south of Fort Sumner, NM downstream to the De Baca and Chaves County line and a 60 km (37 mi) reach from near Hagerman, NM, to near Artesia, NM (52 FR 5295). There are current protections in place for the Pecos bluntnose shiner in the river reach from Sumner to Brantley Reservoirs on the Pecos river; consequently, we believe that the designation of critical habitat would provide little additional benefit for the silvery minnow above the current jeopardy and adverse modifications standards for the Pecos bluntnose shiner (see ''Exclusions Under Section 4(b)(2) of the Act'' section above).

The Pecos bluntnose shiner inhabits main-channel habitats with sandy substrates, low velocity flows, and at depths from 17 to 41 cm (7 to 16 in) (Hatch *et al.* 1985). Adult Pecos bluntnose shiners use main-channel habitats, with larger individuals found mainly in more rapidly flowing water (greater than 40 cm/sec, 1.25 ft/sec), but preferences for particular depths were not found (Hoagstrom *et al.* 1995). Young of the year use the upstream reaches between Sumner and Brantley Reservoirs, which provide shallow, low velocity habitat. These reaches also maintain such habitat at high (bankfull) discharge, providing refugia from swift, deep water. Pecos bluntnose shiner and related mainstream cyprinids (e.g., silvery minnow) are adapted to exploit features of Great Plains rivers (Hoagstrom 2000). These fish species belong to the same guild of broadcast spawners with semi-buoyant eggs and also spawn during high flow events in the Pecos River, with eggs and larvae being distributed downstream to colonize new areas (Bestgen *et al.* 1989). The habitat features used by the Pecos bluntnose shiner are largely affected by ongoing Sumner Dam operations (e.g., block releases). Nevertheless, any flow regime operations in this reach that benefit the Pecos bluntnose shiner, would also benefit the silvery minnow. We believe they could both occupy the same river reach in the future with little to no interspecific competition, in part, because these species historically co-existed (Bestgen and Platania 1991), and microhabitat partitioning has been documented for related species of southwestern fish (Matthews and Hill 1980). Therefore, we believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (e.g., clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow. We invite comments or information relating to the current protections under the Act for the Pecos bluntnose shiner and our exclusion of this area from the designation of critical habitat for the silvery minnow.

Lateral Extent of Critical Habitat

The proposed critical habitat designation defines the lateral extent as those areas bounded by existing levees or in areas without levees the lateral extent of critical habitat is proposed to be defined as 91.4 meters (300 feet) of riparian zone adjacent to each side of the middle Rio Grande. Thus, the lateral extent of proposed critical habitat does not include areas adjacent to the existing levees but within the 300-foot lateral width outside the existing levees (i.e., these areas are not proposed as critical habitat, even though they may be within the 300-foot lateral width). If this proposed rule is finalized, critical habitat will not remove existing levees. We recognize that these areas can be important for the overall health of river ecosystems, but these areas have almost no potential for containing the primary constituent elements because they are protected from the levees and are rarely inundated by water. Therefore, they are not included in the proposed designation because we conclude they are not essential to the conservation of the silvery minnow. Nevertheless, these and other areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the section 9 of the Act take prohibition.

For each stream reach within the middle Rio Grande, the up- and downstream-boundaries are described below. Proposed critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events. Critical habitat includes the area of bankfull width plus 300 feet on either side of the banks. The bankfull width is the width of the stream or river at bankfull discharge, i.e., the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996). Bankfull discharge, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996). This 300-foot width defines the lateral extent of those areas we believe are essential to the species' conservation. Although the silvery minnow cannot be found in these areas when they are dry, they likely provided backwater habitat and were sometimes flooded (Middle Rio Grande Biological Interagency Team 1993), suggesting

these areas may provide habitat during high-water periods. As discussed in this section, we determined that the areas within the 300-foot lateral width are essential to the conservation of the silvery minnow.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Corps for the areas we are proposing to designate. We suspect this is related to the remoteness of various stream reaches. We could not find specific aerial photos, maps, or geographic information systems coverages that accurately delineated vegetation type along the proposed critical habitat unit. If this information were available, we could have refined the extent of the lateral width, specific to various river reaches. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas for larval and juvenile silvery minnow, allow the river to meander within its main channel in response to large flow events, and recreate the mosaic of habitats necessary for the survival and recovery of the silvery minnow); (2) conservation of the adjacent riparian area also helps provide essential nutrient recharge and protection from sediment and pollutants, which contributes to successful spawning and recruitment of silvery minnows; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.,* aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (65 FR 12897; Middle Rio Grande Biological Interagency Team 1993). We invite comments or information relating to the 300-foot lateral width of this proposed designation of critical habitat.

This proposed critical habitat designation takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains (including riparian areas) are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (i.e., wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson *et al.* 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian areas help ensure water courses maintain the habitat components essential to aquatic species (*e.g.,* see U.S.D.A. Forest Service 1979; Middle Rio Grande Biological Interagency Team 1993; Briggs 1996), including the silvery minnow. Habitat quality within the mainstem river channels in the historical range of the silvery minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.,* substrate, water quality, and water quantity) in the middle Rio Grande (Middle Rio Grande Biological Interagency Team 1993). Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term survival and recovery of the silvery minnow.

Human activities that occur outside the river channel can have a demonstrable effect on physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the silvery minnow or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we must consider the definition of critical habitat under the Act. That is, critical habitat must be determined to be essential to a species' conservation and, within areas currently occupied by the species, must be in need of special management considerations or protection.

We do not believe that the entire floodplain is essential to the conservation of the species, and we are not proposing to designate the entire floodplain as critical habitat. However, conservation of the river channel alone is not sufficient to ensure the survival and recovery of the silvery minnow. For the reasons discussed above, we believe the riparian corridors adjacent to the river channel provide an important function for the protection and maintenance of the primary constituent elements and are essential to the conservation of the species.

The lateral extent (width) of riparian corridors fluctuates considerably on the Rio Grande. The appropriate width for riparian protection has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23 to 46 meters (m) (75.4 to 150.9 feet (ft)) wide on each side of a stream to be adequate to help improve or maintain local water quality (Natural Resource Conservation Service 1998, Moring *et al.* 1993, Lynch *et al.* 1985), although lateral widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, these riparian areas are primarily intended to reduce (i.e. protect) detrimental impacts to the stream from sources outside the river channel (e.g., agricultural runoff). Generally, we believe a lateral distance of 91.4 m (300 ft) on each side of the stream beyond the bankfull width to be appropriate for the protection of riparian and wetland habitat and the natural processes involved in the maintenance and improvement of water quality (e.g., see Middle Rio Grande Biological Interagency Team 1993). We believe this lateral width will help ensure the protection of one or more primary constituent elements (e.g., water quality) of the critical habitat. Thus, within the area proposed for critical habitat designation on the middle Rio Grande, we conclude that the 300-foot lateral width is essential to the conservation of the species.

We did not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain primary constituent elements essential for silvery minnow conservation. Some developed lands within the 300-foot lateral extent are not considered critical habitat because they either do not contain the primary constituent elements or they are not essential to the conservation of the silvery minnow. Lands located within the exterior boundaries of the proposed critical habitat designation, but not considered critical habitat include:

existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion canals outside of natural stream channels, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. These developed areas do not contain any of the primary constituent elements and do not provide habitat or biological features essential to the conservation of the silvery minnow, and generally will not contribute to the species' recovery. However, some activities in these areas like activities in other areas not included within the designation (if Federally funded, authorized, or carried out) may affect the primary constituent elements of the proposed critical habitat and, therefore, may be affected by the critical habitat designation, as discussed later in this proposed rule.

Reach-by-Reach Analysis

We conducted a reach-by-reach analysis of the entire known historical range of the silvery minnow to evaluate and select stream reaches that require special management or protection, or are essential to the conservation of the species. As identified in the Recovery Plan (see ''Recovery Plan'' discussion above), important factors we considered in determining whether areas were essential to the conservation of the species include presence of other members of the reproductive guild (e.g. pelagic spawners, species with semibuoyant eggs, etc.), habitat suitability (e.g., appropriate substrate), water quality, and presence of non-natives (competitors, predators, other species of *Hybognathus*, etc.). These important factors were evaluated in conjunction with the variable flow regime of each reach. Each of the stream reaches, to some extent, has a varying flow regime. However, the fact that a river reach may at times experience a prolonged period of low or no flow as a result of a varying flow regime does not preclude the area from being considered essential to the conservation of the species and, further, being proposed as critical habitat. Based on our reach-by-reach analysis, we have determined which reaches are essential for the conservation of the species.

We are proposing to designate the middle Rio Grande as a critical habitat unit. This unit contains all of the primary constituent elements during some or all of the year (see the ''Regulation Promulgation'' section of this rule for exact descriptions of boundaries of the proposed critical habitat unit). We conclude that the proposed critical habitat unit can provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The proposed critical habitat unit is within the middle Rio Grande from immediately downstream of Cochiti Reservoir to the Elephant Butte Reservoir Dam, including the tributary Jemez River from Jemez Canyon Reservoir to its confluence with the Rio Grande. Although we determined that other areas are essential to the conservation of the silvery minnow (i.e., the middle Pecos River from immediately downstream of Sumner Dam to Brantley Dam, NM; and the lower Rio Grande from the upstream boundary of Big Bend National Park to Terrell/Val Verde County line, TX), these areas are not proposed as critical habitat. A description of each stream reach within the silvery minnow's historical range is provided below. We also provide our reasons for determining whether each reach is essential to the conservation of the species and whether we are proposing or not proposing critical habitat for each of the identified reaches. We conclude that we can secure the long-term survival and recovery of this species with the establishment of future experimental populations under section 10(j) of the Act, along with the proposed critical habitat unit in the middle Rio Grande.

The historical range of the species in the Rio Grande is from Española, NM, to the Gulf of Mexico, and, in the Pecos River (a major tributary of the Rio Grande) from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980; Bestgen and Platania 1991). We separated the historical range of the silvery minnow into 12 stream reaches that include: (1) Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, New Mexico; (2) Middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River immediately downstream of Jemez Canyon Reservoir to the confluence of the Rio Grande; (3) Downstream of Elephant Butte Dam to the Caballo Dam, New Mexico; (4) downstream of Caballo Dam, New Mexico, to the American Dam, Texas; (5) downstream of American Reservoir, to the upstream boundary of Big Bend National Park, Texas; (6) the upstream boundary of Big Bend National Park to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, Texas; (7) the Terrell/Val Verde County line, Texas to the Amistad Dam, Texas; (8) downstream of Amistad Dam to the Falcon Dam, Texas; (9) downstream of the Falcon Dam to the Gulf of Mexico, Texas, (10) Pecos river from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, New Mexico, (11) Sumner Dam to the Brantley Dam, NM; (12) Brantley Dam, NM to the Red Bluff Dam, TX; and (13) Red Bluff Dam to the confluence of the Rio Grande, TX. Each of these reaches are analyzed below.

1. Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, Rio Arriba, Sante Fe, and Sandoval Counties, NM. Currently, this reach is dominated by cool water, which is not considered suitable for the silvery minnow (Platania and Altenbach 1998). The majority of this reach is bounded by canyons, with substrate dominated by gravel, cobble, and boulder (Service 1999). The flow regime is also highly variable seasonally because of irrigation and other agricultural needs, and recreational and municipal uses. This river reach is highly manipulated by releases from El Vado and Abiquiu Reservoirs (J. Smith, pers. comm. 2001). Furthermore, silvery minnow populations may have been historically low for some areas of this reach, supporting only small outlier populations (Bestgen and Platania 1991). Currently, this reach is dominated by cool or cold water species, which have almost completely replaced the native fish species (Service 1999). For these reasons, we conclude that habitat for silvery minnow within this stream reach is generally degraded and unsuitable, and is not essential to the conservation of the silvery minnow. Therefore, this stream reach is not proposed as critical habitat.

2. Middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River immediately downstream of Jemez Canyon Reservoir to the confluence of the Rio Grande, Sandoval, Bernalillo, Valencia, and Socorro Counties, NM. The middle Rio Grande is currently occupied, and the status of the silvery minnow within this segment is unstable (Bestgen and Platania 1991; Dudley and Platania 1999; Platania and Dudley 2001; 2002). This area currently contains the primary constituent elements (described above) during all or a part of the year and is considered suitable habitat for the silvery minnow, as shown by the presence of the silvery minnow within this reach. The river reaches in the proposed critical habitat unit are degraded from lack of floodplain connectivity, non-native vegetation, stabilized banks (e.g., jetty jacks), streambed aggradation, and decreasing channel width, increasing depths, and increasing velocities (BOR 2001a; Service 2001b). Thus,

conservation of the silvery minnow requires stabilizing populations within the middle Rio Grande, including special management considerations or protections (e.g., habitat management and/or restoration).

The middle Rio Grande is essential to the conservation of the silvery minnow (see discussion below), and therefore we propose the following reaches as a critical habitat unit. This proposed critical habitat unit does not include the ephemeral or perennial irrigation canals and ditches, including the LFCC (i.e., downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the headwaters of Elephant Butte Reservoir) that are adjacent to a portion of the stream reach within the middle Rio Grande because these areas do not offer suitable refugia and are not useful for recovery of the silvery minnow. The stream reaches in the proposed middle Rio Grande critical habitat unit include (see the Regulation Promulgation section of this rule for exact descriptions of boundaries of this proposed critical habitat unit):

a. Jemez Canyon Reach—8 km (5 mile) of river immediately downstream of Jemez Canyon Reservoir to the confluence of the Rio Grande. This reach of river is manipulated by releases from Jemez Canyon Reservoir. Releases from this reservoir are determined by downstream needs and flood events occurring in the Jemez River. Silvery minnows historically occupied this reach of the Jemez River and have recently been collected there (Sublette *et al.* 1990; Corps 2001). The water within this reach is continuous to the confluence with Rio Grande and currently contains the primary constituent elements (described above) during all or a part of the year. Although this reach currently provides suitable habitat for the silvery minnow, we believe that it is important to ensure that special management actions are implemented within this stream reach. We also conclude that this area is essential to the conservation and contains the primary constituent elements for the silvery minnow. This area is essential because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Moreover, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (i.e., the extirpation of fish within this reach would create a very unstable population within the downstream reaches). Thus, we propose this section of the Jemez River as critical habitat for the silvery minnow.

b. Cochiti Reservoir Dam to Angostura Diversion Dam (Cochiti Reach)—34 km (21 mile) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam. This reach is somewhat braided and is dominated by clear water releases from Cochiti Reservoir. Since Cochiti Reservoir was filled, the downstream substrate has changed from a course sand to a gravel substrate (Baird 2001). Silvery minnows were collected immediately downstream of Cochiti Dam in 1988 (Platania 1993). Although the Cochiti reach has not been monitored since the mid-1990s (Platania 1995), it is believed that silvery minnow may still be present within this reach, but reduced in abundance. For example, silvery minnows were documented near the Angostura Diversion Dam in 2001 (Platania and Dudley 2001; 2002; Service 2001c). In this reach, water releases from Cochiti Reservoir have scoured sand from the stream channel and reduced the downstream temperatures (Bestgen and Platania 1991; Platania 1991; 59 FR 36988; Service 1999; Hoagstrom 2000). These effects (e.g., low water temperatures) may inhibit or prevent reproduction among Rio Grande Basin Cyprinids (Platania and Altenbach 1998), but it is unknown if water temperatures have affected silvery minnow reproduction within this reach. Although reservoirs can modify river flows and habitat (e.g., the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000), we believe this river reach is essential to the conservation of the silvery minnow because we believe it is still occupied by the species and contributes to its survival in downstream reaches (i.e., the eggs and larvae of the silvery minnow drift in the water column and may be transported downstream depending on river flows and habitat conditions). We reviewed aerial photographs from 1997, and have determined that the river through this reach is braided in areas and contains many side channels. We also spoke with the Corps and conclude there is a high potential to increase the amount of suitable habitat (e.g., debris piles, low velocity backwaters, side channels, etc.) within the entire reach, but particularly in the proximity of the confluences of Galisteo Creek and the Rio Grande and the Sante Fe River and the Rio Grande (D. Kreiner, U.S. Army Corps of Engineers, pers. comm. 2001). Thus, we conclude special management in this reach is needed. We conclude that this area contains suitable habitat for the silvery minnow and contains the primary constituent elements (described above) during all or a part of the year. Therefore, this reach is proposed as critical habitat.

c. Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—61 km (38 mile) of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam. Silvery minnows and suitable habitat are still present throughout this reach of the river, although their abundance appears to be low (Dudley and Platania 2001; 2002). This reach is relatively wide 183 m (600 ft) and the substrate is mostly course sand to gravel (Baird 2001). The river bank within this reach is dominated by bank stabilization (e.g., jetty jacks), which has led to the floodplain being predominantly disconnected from the river. Bank stabilization devices and other flood control operations (e.g., channelization) have led to flows that seldom exceed channel capacity, such that the river dynamics which likely provided backwater habitat for the silvery minnow no longer function naturally. These river processes historically shaped and reshaped the river, constantly redefining the physical habitat and complexity of the river. Historical large flow events allowed the river to meander, thereby creating and maintaining the mosaic of habitats necessary for the survival of the silvery minnow and other native fish (Middle Rio Grande Biological Interagency Team 1993). We conclude that the creation and maintenance of these habitats is essential to the conservation of the silvery minnow. We believe that special management is necessary in this and other downstream reaches within the middle Rio Grande to create and maintain the habitat complexity (e.g., backwater areas, braided channels, etc.) that was historically present, but may not currently present, in these river reaches. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Thus, we propose this reach as critical habitat.

d. Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—90 km (56 mi) of river immediately downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam. The river bank within this reach is also dominated by bank stabilization (e.g., jetty jacks), and the floodplain is predominantly disconnected from the river. The substrate is mostly sand and silt and there are many permanent islands within the river channel (J. Smith, pers. comm. 2001). This reach provides continuous water flow in most years with infrequent periods of low or

no flow (Service 2001b). Nevertheless, flows vary markedly in magnitude, from high spring to low summer flows. The variable flow regime is a result of irrigation demand, irrigation returns (e.g., augmented flow), precipitation, temperature, and sediment transport. This reach also contains numerous arroyos and small tributaries that provide water and sediment during rainstorm events, which may periodically augment river flows (Service 2001b; J. Smith, pers. comm. 2001). Silvery minnows and suitable habitat are still present throughout this reach of the river; however, abundance appears to be low (Dudley and Platania 2001; 2002). Nevertheless, we conclude that this area is essential to the conservation of the silvery minnow because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Similarly, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (i.e., the extirpation of fish within this reach would create a very unstable population within the downstream reaches). This reach currently contains the primary constituent elements (described above) during all or a part of the year. We believe that special management is necessary within this reach to create and maintain the habitat complexity (e.g., backwater areas, debris piles, meandering river, etc.) that was historically, but may not currently be associated with this reach. Thus, we propose this reach as critical habitat.

e. San Acacia Diversion Dam to the Elephant Butte Dam (San Acacia Reach)—147 km (92 mi) of river immediately downstream of the San Acacia Diversion Dam to the Elephant Butte Dam. We selected Elephant Butte Dam as the boundary of the proposed critical habitat because it is a stationary structure. Nevertheless, the area inundated by the reservoir does not provide those physical or biological features essential to the conservation of the species and is specifically excluded from the proposed critical habitat. We define the reservoir as that part of the body of water impounded by Elephant Butte Dam where the storage waters are lentic (relatively still waters) and not part of the lotic (flowing water) river channel.

The channel width within this reach varies from approximately 15 m (50 ft) to approximately 198 m (650 ft). The substrate is mostly sand and silt. The flow regime within this reach was historically, and is currently, highly variable. In fact, this stretch may not have provided continuous flow in some years prior to the 1900s (Middle Rio Grande Conservancy District 1999; Scurlock and Johnson 2001). As described above, we are soliciting comments or information relating to the proposed designation of critical habitat in this reach, which may experience periods of no or low flow.

Currently, the river channel has been highly modified by water depletions from agricultural and municipal use, dams and water diversion structures, bank stabilization, and the infrastructure for water delivery (e.g., irrigation ditches). These modifications have led to the loss of sediment, channel drying, separation of the river from the floodplain, and changes in river dynamics and resulting channel morphology. Consequently, this reach requires special management considerations similar to those discussed above. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Although the silvery minnow continues to be widespread within this reach with higher abundance than the Angostura or Isleta reaches (Dudley and Platania 2001; 2002), the variable flow regime and modifications to the river have increased the potential for short and long-term impacts not only to the silvery minnow, but also to its habitat. Thus, we determine that this area is essential to the conservation of the species and in need of special management considerations or protections; we propose this reach as critical habitat.

3. Downstream of Elephant Butte Reservoir to the Caballo Dam, Sierra County, NM. This short 26-km (16-mile) reach is highly channelized with widely variable flow regimes. Construction of Elephant Butte and Caballo Reservoirs in 1916 and 1938, respectively, severely altered the flows and habitat within this reach (Bestgen and Platania 1991). The silvery minnow has not been documented within this reach since 1944 (Service 1999). This river reach is currently highly channelized to expedite water deliveries and very few native fish remain (Propst *et al.* 1987; International Boundary and Water Commission 2001). This reach is subject to prolonged periods of low or no flow and there is no spring runoff spike (Service 1999). Altered flow regimes will continue to affect habitat quality in this reach and it does not contain suitable habitat for the silvery minnow. The stream length in this reach is inadequate (e.g., less than 134 to 223 mi) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). We conclude this area is not essential to the conservation of the species. Therefore, this river reach is not proposed as critical habitat.

4. Downstream of Caballo Dam to American Reservoir Dam, Sierra and Doña Ana, Counties, NM and El Paso, County, TX. This approximately 176-km (110 mile) reach has a highly regulated flow regime from releases of water stored in Caballo Reservoir. This reach is also highly canalized with winter flows near zero in the upper portions and does not contain suitable habitat for the silvery minnow (Service 1999; IBWC 2001a). Silvery minnow have not been reported from this reach since 1944 (Bestgen and Platania 1991, Service 1999). The reach is currently inhabited by many non-native fish species (IBWC 2001a). Due to lack of suitable habitat, diminished and highly regulated flow (IBWC 2001a), this reach of river no longer contains suitable habitat for the silvery minnow and is not essential to the conservation of the silvery minnow. Thus, this reach is not proposed as critical habitat.

5. Downstream of American Reservoir to the upstream boundary of Big Bend National Park, El Paso, Hudspeth, and Presidio, Counties, TX. Portions of this reach, primarily upstream of Presido, TX, are continually dewatered, especially between Fort Quitman and Presidio (Hubbs *et al.* 1977; Department of Interior 1998). River flow is augmented downstream of Presido by waters flowing from the Rio Conchos. The near-continuous input of municipal waste has led to a deterioration of water quality, with corresponding changes to the ichthyofauna (fish species assemblage within a region) (Hubbs *et al.* 1977; Bestgen and Platania 1988; IBWC 1994; El-Hage and Moulton 1998a). Flows in this reach consist of a blend of raw river water; treated municipal waste from El Paso, TX; untreated municipal water from Juarez, Mexico; irrigation return flow; and the occasional floodwater (Texas Water Development Board 2001). For example, water temperature patterns can be elevated and oxygen levels decreased by the input of various pollutants (e.g., nitrogen, phosphorus) (Texas Water Development Board 2001; IBWC 2001b). Water quality is believed to improve farther downstream of the confluence of the Rio Conchos and Rio Grande. The development of agriculture and population growth of this area has resulted in a decrease of water quantity and quality, which has had a significant impact on the range and distribution of many fish species within this reach

(IBWC 1994; El-Hage and Moulton 1998a). There are no current or museum records of silvery minnow from this reach (Service 1999). Because of dewatering upstream and the degraded water quality, we believe this reach of river would never provide suitable habitat for the silvery minnow. Thus, this river reach is not essential to the conservation of the silvery minnow and is not proposed as critical habitat.

6. The upstream boundary of Big Bend National Park (3.2 km, 2 mi downstream of Lajitas), Brewster County, to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, TX. This approximately 368-km (230-mile) reach of the lower Rio Grande was historically occupied but is currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The continuing presence of members of the pelagic spawning guild (e.g., speckled chub and Rio Grande shiner) are evidence that the lower Rio Grande through Big Bend National Park area may support reestablishment of silvery minnow (Platania 1990; IBWC 1994). Moreover, water quality, compared to the reach upstream of the Park, is greatly improved in this reach from the many freshwater springs within Big Bend National Park (MacKay 1993; R. Skiles, pers. comm. 2001; IBWC 1994). This area is protected and managed by the National Park Service and the river currently supports a relatively stable hydrologic regime (R. Skiles, pers. comm. 2001). The National Park Service's management authority in the wild and scenic river designation currently extends 0.25 mi from the ordinary high water mark. Thus, the area designated as a wild and scenic river outside of Big Bend National Park is currently managed by the National Park Service under their authorities and is considered part of the National Park Service System. As discussed above, we have determined that recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (see ''Recovery Plan'' discussion above), and should include areas within the lower Rio Grande. Because the silvery minnow has been extirpated from this reach, Federal agencies have determined their actions will not adversely affect the silvery minnow and therefore have not consulted with the Service under section 7(a)(2) on their actions related to this reach. We believe it is important to ensure that the assistance of Federal agencies, the State of Texas resource agencies, and non-Federal entities in future recovery actions (e.g., the establishment of an experimental population) are not compromised. Although Big Bend National Park expressed support for a critical habitat designation for the silvery minnow within the National Park, they also indicated that if areas outside the National Park, but within the wild and scenic river were included, their attempts at developing a river management plan could be compromised (F. Deckert, Big Bend National Park, pers. comm.).

We have determined that this reach is essential to the conservation of the silvery minnow. However, our conservation strategy for the silvery minnow is to establish populations within its historical range under section 10(j) of the Act, and this could include all or portions of this stream reach. We believe that this area will contribute to the recovery of the silvery minnow, but have not proposed this stream reach for designation of critical habitat. As indicated in the ''Public Comments Solicited'' section of this rule we are seeking comments on whether this reach should or should not be designated as critical habitat based upon the factors discussed in this proposed rule and any other relevant information that you believe should be considered in our analysis. We are also soliciting comments on the applicability of an experimental population under section 10(j) of the Act to provide for conservation and recovery of the silvery minnow within this reach of its historical range.

7. The Terrell/Val Verde County line, TX to the Amistad Dam, TX. This short reach is highly influenced by the Amistad Dam at its terminus. It is also believed that introduced fish played a role in the extirpation of silvery minnow in this reach (Bestgen and Platania 1991). Water quality conditions within this reach are generally degraded, and are also a concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). For all these reasons, we do not believe that this river reach is essential to the conservation of the silvery minnow; therefore, it is not proposed as critical habitat.

8. Downstream of the Amistad Dam to the Falcon Dam, Val Verde, Kinney, Maverick, Web, Zapata, and Starr Counties, TX. This reach does provide continuous base flows ranging between 500 and 3000 cfs (Service 1999), but the reach is highly urbanized and has many instream barriers (e.g., earthen dams) at Maverick, Eagle Pass, and Indio that would prevent movements of silvery minnow. Water quality is also a potential concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). This reach is heavily channelized with little to no stream braiding and, in areas inappropriate substrate (e.g., cobble). There is no suitable habitat for the silvery minnow within this reach, and the species was last recorded here in the 1950s (Service 1999). The fish community within this reach is dominated by warm water non-native predators (Platania 1990; Service 1999). Because this reach does not have suitable habitat for the silvery minnow and water quality during variable flow conditions is a concern, this reach of river is not essential to the conservation of the silvery minnow and is not proposed as critical habitat.

9. Downstream of Falcon Reservoir to the Gulf of Mexico, Starr, Hildago, and Cameron, Counties, TX. The silvery minnow historically occupied this reach of river (Service 1999). In fact, the type locality (the location from which the species was originally described) for the species is Brownsville, TX (Hubbs and Ortenburger 1929). However, the last collection of the silvery minnow occurred in 1961 just downstream of Falcon Reservoir (Bestgen and Platania 1991). This flow regime of this reach of the Rio Grande is highly influenced by releases from Falcon Reservoir. Most of the tributary inflow is controlled or influenced by small impoundments off the main channel of the river. The lower portion of this reach is often dewatered with the river flow stopping before the confluence with the Gulf of Mexico (IBWC 2001b). The fish community in this reach of the Rio Grande has had a significant shift toward estuarine (a mixture of fresh and salt water) type species (IBWC 1994; Contreras-B. and Lozano-V.1994). There has also been a significant loss of the native fish fauna in the Mexican tributaries in the last several decades (Hubbs *et al.* 1977 Almada-Villela 1990; Platania 1990), apparently from poor water quality (e.g., see Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). Finally, invasive weeds (e.g., hydrilla and hyacinth) have clogged many areas of this reach and have reduced the amount of dissolved oxygen in the water (IBWC 2001b). Because this reach does not have suitable habitat, there appears to be little benefit in trying to intensively managing the flow regime in this reach of river. For these reasons, this reach is not considered essential to

the conservation of the silvery minnow and is not proposed as critical habitat.

10. Pecos River from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, NM. This reach is approximately 89 km (55 mi) and is typified by wide fluctuations in flow regimes from upstream releases from Santa Rosa Reservoir (Hoagstrom 2000). Within this reach there is one diversion at Puerto del Luna, NM. The silvery minnow has not been collected within this reach since 1939 (Bestgen and Platania 1991; Service 1999). The habitat in this reach is not suitable for the silvery minnow because much of the surrounding topography is composed of steep cliffs and canyons (Hoagstrom 2000). Canyon habitat does not provide suitable habitat (e.g., shallow, braided, streams with sandy substrates) for the silvery minnow (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et al.* 2001). Due to the short length of this reach, fluctuations in the flow regime, and the absence of suitable habitat for the silvery, this reach of river is not essential to the conservation of the silvery minnow and is not proposed as critical habitat.

11. Middle Pecos Reach—approximately 345 km (214 mi) of river immediately downstream of Sumner Reservoir to the Brantley Reservoir Dam in De Baca, Chaves, and Eddy Counties, NM. The Pecos River was historically occupied but is currently unoccupied by the silvery minnow (Bestgen and Platania 1991). In fact, the silvery minnow was once one of the most common fish species present between Sumner and Avalon Reservoir (the area currently inundated by Brantley Reservoir) (Bestgen and Platania 1991). The Pecos River can support a relatively stable hydrologic regime between Sumner and Brantley Reservoirs, and, until summer 2001, this stretch maintained continuous flow for about the last 10 years (D. Coleman, pers. comm. 2001). For example, groundwater seepage areas and base flow supplementation from Sumner Dam bypasses can offer a degree of stability for the river flow, especially during low flow periods (Hatch *et al.* 1985; Service 2001). Still, segments of this river reach were dewatered for at least 5 days during summer 2001 (D. Coleman, pers. comm. 2001). Although springs and irrigation return flows maintain water flow in the lower portions of this river reach during times when no water is being released from Sumner Dam, periods of low discharge or intermittency have the potential to impact much of the suitable habitat within portions of this reach (Service 2001).

After the construction of Sumner Dam, major channel incision occurred during the 1949 to 1980 period, accompanied by salt cedar proliferation along the river banks (Hoagstrom 2000). High velocity flows within the incised (deep) river channel have the ability to displace eggs from pelagic spawners such as the silvery minnow. This channel incision also reduced the areas of low velocity habitat within this river reach (Hoagstrom 2000). Recently lengthy reservoir releases such as those that occurred in 1988 (36 days) and in 1989 (56 days), have been shortened to about 10 days, which has benefitted species such as the Pecos bluntnose shiner (Service 2001). Nevertheless, historical block releases of water from Sumner Reservoir have modified river flows and habitat (e.g., the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000).

The recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (Service 1999). We believe that repatriation is required outside of the area presently occupied by the species (i.e., the middle Rio Grande) to ensure the recovery of the silvery minnow (50 CFR 424.12(e)) (see ''Recovery Plan'' discussion above). We recognize that habitat within this river reach is degraded, but believe this reach within the middle Pecos River may provide one of the most promising areas for conducting recovery efforts because we believe it still contains habitat suitable for the silvery minnow (Hoagstrom 2000). For example, the continuing presence of members of the pelagic spawning guild (e.g., speckled chub, Rio Grande shiner, Pecos bluntnose shiner) is evidence that this reach of the Pecos River contains habitat suitable for the silvery minnow and may support reestablishment of the species (Hoagstrom 2000).

Federal agencies have not consulted with us on how their actions will affect the silvery minnow, because the species no longer occurs within the Pecos River (D. Coleman, pers. comm. 2001). Because habitat suitable for the silvery minnow is still present within this river reach, we find that this stream reach is essential to the conservation of the species. Although we have determined that this reach is essential to the conservation of the silvery minnow, we have not proposed this area for designation of critical habitat (see ''Exclusions Under Section 4(b)(2) of the Act'' section above). Our conservation strategy is to develop, through Federal rulemaking procedures, one or more experimental populations within the historical range of the silvery minnow. We believe this river reach may provide a suitable area for an experimental population. Consequently, we are soliciting comments on the applicability of an experimental population under section 10(j) of the Act to provide for conservation and recovery of the silvery minnow in areas of currently suitable habitat within its historical range.

12. Downstream of Brantley Reservoir, Eddy County, NM to Red Bluff Reservoir, Loving and Reeves Counties, Texas. This reach is short, with a highly variable flow regime that is dependent on agricultural demand. This reach is also highly segmented with small closely placed impoundments (e.g., permanent and temporary diversion dams) that pond water, impede fish movements, and would not allow for adequate stream length (e.g., 134 to 223 mi) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). Additionally, agricultural and oil field pollution and permian salts (i.e., brine) are added to the river in this reach, decreasing the water quality to levels that likely would not support the silvery minnow (Campbell 1959; Larson 1994). Silvery minnow was historically uncommon within this reach; only 14 specimens from two collections are known (Bestgen and Platania 1991). Due to the short length of this reach, fluctuations in the flow regime, degraded water quality, and the absence of suitable habitat for the silvery minnow, it is not considered essential to the conservation of the silvery minnow and is not proposed as critical habitat.

13. Downstream of Red Bluff Reservoir to the confluence with Rio Grande, Loving, Reeves, Pecos, Ward, Crane, Crockett, and Terrell Counties, TX. Historically silvery minnows occurred in this reach, though their exact distribution and abundance is unclear (Campell 1958,Trevino-Robinson 1959, James and De La Cruz 1989, Linam and Kleinsasser 1996, Garrett 1997, Service 1999). For example, Bestgen and Platania (1991) suggest silvery minnows may have been uncommon within this reach because of pond habitat and high water salinity. However, this area may not have been well surveyed when the silvery minnow was still extant in the Pecos River (D. Propst, New Mexico Game and Fish, pers. comm. 2001). Still, sampling the middle and lower parts of this river reach has been historically difficult because of dense vegetation, steep canyon banks, and lack of public access (Campbell 1959). The upper segment of this reach can be characterized as devoid of suitable habitat, and has a

highly variable flow regime from release of water from Red Bluff Reservoir for agricultural use. Indeed, many freshwater springs that historically augmented the Pecos River throughout this reach have recently been diminished or gone dry (Campbell 1959; Brune 1981 cited in Hoagstrom 2000; Barker *et al*. 1994; El-Hage and Moulton 1998b;). The water quality in this upper portion is also poor and dominated by high salinity (generally exceeding 5 parts per thousand) (Hiss 1970; Hubbs 1990; Linam and Kleinsasser 1996; Miyamoto *et al*. 1995; El-Hage and Moulton 1998b). Additionally, algal blooms (*Prymnesium parvum*) have essentially eliminated all the fishes throughout from Malaga, NM, to Amistad Dam, TX (James and De la Cruz 1989; Hubbs 1990; Rhodes and Hubbs 1992). The river channel is also somewhat incised and dominated by non-native vegetation in parts (Koidin 2000; Harman 1999; IBWC 2001b). Agricultural needs diminish south of Girvin, TX, and water quality conditions (e.g., salinity) generally begin to improve downstream from the confluence of Independence Creek to Amistad Dam (Hubbs 1990; Linam and Kleinsasser 1996). This improvement could result from the freshwater springs within the lower 160 km (100 mi) stretch of this reach. Nevertheless, gaging records from the lower segment indicate that there is virtually no flow during drought conditions (Texas Water Development Board 2001) and water quality (e.g., total dissolved solids) at Shumla Bend, just upstream of Amistad Reservoir, would be expected to have a deleterious effect on aquatic life (IBWC 1994). We did not include this reach because the current or potential suitability for the silvery minnow is unknown; detailed habitat studies have not been conducted in this reach. Moreover, it is believed that this area contains a network of steep canyons, with rock and course gravel substrate (Campbell 1959; Texas Parks and Wildlife 1999). Canyon habitat reduces stream channel width, which decreases sinuosity and meandering, and creates deep channels that do not provide suitable habitat (e.g., shallow, braided, streams with sandy substrates) (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et al.* 2001). Additionally, the presence of algal blooms will continue to affect water quality in this reach. For these reasons, we do not believe that this reach is essential to the conservation of the species. It is unknown whether this reach contains or has the potential to develop the primary constituent elements. Although portions of this river reach may contain fresh water (i.e., salinity less than 1 part per thousand), we suspect that much of this stream reach may never provide suitable habitat for the silvery minnow, and it is not proposed as critical habitat.

Land Ownership

The proposed critical habitat for the silvery minnow encompasses stream reaches where the species has been collected in the recent past and where it is currently known to exist. Proposed critical habitat for the silvery minnow includes both the active river channel and the area of bankfull width plus 300 feet on either side of the banks, except in areas narrowed by existing levees.

Ownership of the river channel and the lateral width along the bank is unclear in the middle Rio Grande proposed critical habitat unit. However, most of the land in the middle Rio Grande valley that abuts critical habitat is within the administrative boundaries of the Middle Rio Grande Conservancy District. The Middle Rio Grande Conservancy District is a political subdivision of the State of New Mexico which provides for irrigation, flood control, and drainage of the Middle Rio Grande valley in New Mexico, from Cochiti Dam downstream 150 mi (285 km) to the northern boundary of the Bosque del Apache National Wildlife Refuge. Within these 150 miles are also the lands of the communities of Algodones, Bernalillo, Rio Rancho, Corrales, Albuquerque, Los Lunas, Belen, Socorro, and a number of smaller incorporated and unincorporated communities. Other landowners, sovereign entities, and managers include: The Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta; the BOR; the Service; the U.S. Bureau of Land Management (BLM); New Mexico State Parks Division; New Mexico Department of Game and Fish; New Mexico State Lands Department; and the Corps. Approximately 86 river km (45 mi) of our proposed critical habitat run through Pueblo lands including: Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Indian Pueblos and Tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Activities on Federal lands that may affect the silvery minnow or its proposed critical habitat will require section 7 consultation. Actions on private, State, or Indian Pueblo and Tribal lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect proposed critical habitat. Federal actions not affecting the species or its proposed critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

When we issue a biological opinion concluding that a project is likely to

result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director of the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we will analyze the effects of the action in relation to the designated critical habitat unit (Service and National Marine Fisheries Service 1998). Therefore, the analysis (i.e., the determination whether an action destroys or adversely modifies critical habitat) conducted through consultation or conferencing should evaluate whether that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat unit to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of the critical habitat unit for both the survival and recovery of the silvery minnow is appreciably reduced (50 CFR 402.02).

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect the silvery minnow and proposed critical habitat. We have reviewed and continue to review numerous activities proposed within the range of the silvery minnow that are currently the subject of formal or informal section 7 consultations. A wide range of Federal activities have the potential to destroy or adversely modify critical habitat of the silvery minnow. These activities may include land and water management actions of Federal agencies (e.g., Corps, BOR, Service, and the Bureau of Indian Affairs) and related or similar actions of other federally regulated projects (e.g., road and bridge construction activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; construction, maintenance, and operation of diversion structures; management of the conveyance channel; and levee and dike construction and maintenance by the BOR; and, National Pollutant Discharge Elimination System permits authorized by the Environmental Protection Agency). These types of activities have already been examined under consultation with us upon listing the species as endangered and in our previous designation of critical habitat. We expect that the same types of activities will be reviewed in section 7 consultation if critical habitat is again designated. However, there is some potential for an increase in the number of proposed actions we review under section 7 of the Act from actions proposed in areas that are contained within the 300-foot lateral width. We believe that we currently review most actions (e.g., indirect effects) that could affect silvery minnow through section 7 that occur in this lateral width, but acknowledge that an explicit boundary could result in a slight increase in consultations.

Activities that we are likely to review under section 7 of the Act include, but are not limited to:

1. Significantly and detrimentally altering the river flow or the natural flow regime of any of the proposed river reaches in the middle Rio Grande. Possible actions would include groundwater pumping, impoundment, and water diversion with a Federal nexus (i.e., activities that are authorized, funded, or carried out by a Federal agency). We note that such flow reductions that result from actions affecting tributaries of the designated stream reaches may also destroy or adversely modify critical habitat.

2. Significantly and detrimentally altering the characteristics of the 300-foot lateral width (e.g., parts of the floodplain) in the middle Rio Grande critical habitat unit. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development with a Federal nexus.

3. Significantly and detrimentally altering the channel morphology (e.g., depth, velocity, etc.) of any of the stream reaches within the proposed designation. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances with a Federal nexus.

4. Significantly and detrimentally altering the water quality within the proposed designation. Possible actions with a Federal nexus would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

5. Introducing, spreading, or augmenting non-native aquatic species within the proposed designation. Possible actions with a Federal nexus would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

Not all of the identified activities are necessarily of current concern within the middle Rio Grande; however, they do indicate the potential types of activities that will require consultation in the future and, therefore, that may be affected by the proposed designation of critical habitat. We do not expect that the proposed designation of critical habitat will result in a significant regulatory burden above that already in place due to the presence of the listed species. However, areas included within the 300-foot lateral width of the proposed designation that are not currently occupied by the species may result in an additional regulatory burden when there is a Federal nexus (Federal funding, authorization, or permit).

As discussed previously, Federal actions that are found likely to destroy or adversely modify critical habitat may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat. Such project modifications may include such things as adjustment in timing of projects to avoid sensitive periods for the species and its habitat; replanting of riparian vegetation; minimization of work and vehicle use in the main river channel or the 300-foot lateral width; restriction of

riparian and upland vegetation clearing in the 300-foot lateral width; fencing to exclude livestock and limit recreational use; use of alternative livestock management techniques; avoidance of pollution; minimization of ground disturbance in the 300-foot lateral width; use of alternative material sources; storage of equipment and staging of operations outside the 300-foot lateral width; use of sediment barriers; access restrictions; and use of best management practices to minimize erosion.

The silvery minnow does not need a large quantity of water to survive but it does need a sufficient amount of flowing water to reduce prolonged periods of low or no flow and minimize the formation of isolated pools. The identification of primary constituent elements for the silvery minnow is not intended to create a high-velocity, deep flowing river, with a bank-to-bank flow. The silvery minnow does not require such habitat characteristics. Instead, the silvery minnow requires habitat with sufficient flows through the irrigation season to avoid prolonged periods of low or no flow; additionally, a spike in flow in the late spring or early summer to trigger spawning, and a relatively constant winter flow are also required.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of proposed critical habitat, contact the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section). If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsimile 505–248–6788).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this proposed rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). We will further utilize the draft and final economic analyses and our analysis of other relevant impacts, and consider all comments and information submitted during the public hearing and comment period, to make a final critical habitat designation. We may exclude areas from the final designation upon a final determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. In accordance with section 4(b)(2) of the Act we cannot exclude areas from critical habitat when their exclusion will result in the extinction of the species. We have prepared a draft economic analysis that is available for public review and comment during the comment period for this proposed rule. Send your requests for copies of the draft economic analysis to the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, Indian Pueblos and Tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provide technical assistance to Indian Pueblos and Tribes who ask for assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the Indian Pueblos and Tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. Recognizing a government-to-government relationship with Indian Pueblos and Tribes and our Federal trust responsibility, we have and will continue to consult with the Indian Pueblos and Tribes that might be affected by the designation of critical habitat.

We will make every effort to consult with the affected Indian Pueblos and Tribes during the comment period for this proposed rule to gain information on: (1) possible effects if critical habitat were designated on Tribal lands; and (2) possible effects on tribal resources resulting from the proposed designation of critical habitat on non-tribal lands. We will meet with each potentially affected Pueblo or Tribe to ensure that government-to-government consultation on proposed critical habitat issues occurs in a timely manner.

Designation of Critical Habitat on Tribal Lands

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' We included lands of the Indian Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta in this proposed designation of critical habitat for the silvery minnow.

As provided under section 4(b)(2) of the Act, we are soliciting information on the possible economic and other impacts of critical habitat designation, and we will continue to work with the Indian Pueblos and Tribes in developing voluntary measures adequate to conserve silvery minnow on tribal lands. If any of these Indian Pueblos and Tribes submit management plans, we will consider whether these plans provide adequate special management or protection for the species, and we will further weigh the benefits of including these areas versus the benefits of excluding these areas under section 4(b)(2) of the Act. We will use this information in determining which, if any, tribal lands should be excluded in the final designation of critical habitat for the silvery minnow.

Effects on Tribal Trust Resources From Critical Habitat Designation on Non-Tribal Lands

We do not anticipate that the proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, in complying with our tribal trust responsibilities, we must communicate with all Indian Pueblos and Tribes potentially affected by the designation. Therefore, we are soliciting information from the Indian Pueblos and Tribes and will arrange meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation. We sent preproposal letters to all affected Indian Pueblos including Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta, and San Juan, and solicited additional information from them regarding biological, cultural, social, or economic data that were pertinent to the EIS process. We will continue to provide assistance to and cooperate with Indian Pueblos and Tribes that potentially could be affected

by this proposed critical habitat designation at their request.

Public Comments Solicited

We intend to make any final action resulting from this proposed rule to be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat. Specifically we ask if there is adequate special management and protection in place on any lands included in this proposed rule to allow us not to designate these lands as critical habitat. We also seek information concerning New Mexico or Texas State water rights issues (e.g., Rio Grande Compact delivery obligations) and how designation of critical habitat might affect these uses. We also request assistance in describing the existing conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande. For these and other areas that have the potential for low or no flow events, we are soliciting comments or information relating to the proposed designation of critical habitat that includes areas that may experience these conditions. In addition, we are seeking comments on the primary constituent elements and how they relate to the existing conditions (i.e., flow regime) in the middle Rio Grande.

2. We ask whether areas or river reaches suggested in the Recovery Plan for potential reestablishment of the silvery minnow, which are not included in this proposed rule, should be designated as critical habitat. We are further soliciting information or comments concerning our conservation strategy for the silvery minnow. We believe that, in particular, the development of one or more experimental populations provides a conservation benefit for the silvery minnow that outweighs the conservation benefit of designating areas as critical habitat. Depending on public comments, information, or data received, we will evaluate whether the areas we have determined are essential for the conservation of the silvery minnow (i.e., the river reach of the middle Pecos and lower Rio Grande in Big Bend National Park and downstream to the Terrell/Val Verde County line) should be designated as critical habitat, and critical habitat could be revised as appropriate.

3. Specific information on the amount and distribution of silvery minnow habitat, and what habitat is essential to the conservation of the species and why;

4. Land use practices and current or planned activities in the subject areas, including comments or information relating to the 300-foot lateral width, and their possible impacts on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat including, in particular, any impacts on small entities or families; and

6. Economic and other values associated with designating critical habitat for the silvery minnow, such as those derived from nonconsumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

We are also seeking additional information about the silvery minnow's status and would like information on any of the following:

1. The location of silvery minnow populations;

2. Any additional information about the silvery minnow's range, distribution, and population sizes; and

3. Any current or planned activities (i.e., threats or recovery actions) in or near areas occupied by the silvery minnow.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

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

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposed rule. It is important to note that we have not proposed critical habitat designation for two areas that we have determined are essential for the conservation of the silvery minnow (i.e., the river reach of the middle Pecos and lower Rio Grande in Big Bend National Park and downstream to the Terrell/Val Verde County line). We believe that our conservation strategy of developing one or more experimental populations outweighs the benefits that would be provided to the silvery minnow by including these areas within a designation of critical habitat. However, depending on public comments, information, or data received, we will evaluate whether these areas within the silvery minnow's historical range should be designated as critical habitat,

and critical habitat could be revised as appropriate.

Public Hearings

The Act provides for one or more public hearings on this proposed rule, if requested. Given the high likelihood of multiple requests we have scheduled two public hearings. We will hold public hearings in Socorro, New Mexico, on June 25, 2002; and in Albuquerque, NM, on June 26, 2002 (see **ADDRESSES** section for times and locations). Announcements for the public hearings will be made in local newspapers.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

1. We have prepared a draft economic analysis to assist us in considering whether areas should be excluded pursuant to section 4(b)(2) of the Act. The draft analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency.

2. As discussed above, Federal agencies would be required to ensure that their actions do not destroy or adversely modify designated critical habitat of the silvery minnow. Because of the potential for impacts on other Federal agencies activities, we will review this proposed action for any inconsistencies with other Federal agency actions.

3. We believe that this rule, if finalized, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any significant economic effects such that it will have an annual economic effect of $100 million or more.

4. OMB has determined that the critical habitat portion of this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review. The proposed rule follows the requirements for proposing critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 804(2)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this proposed critical habitat designation potentially affects a ''substantial number'' of small entities in counties supporting proposed critical habitat areas. It also quantifies the probable number of small businesses that experience a ''significant effect.'' While SBREFA does not explicitly define either ''substantial number'' or ''significant effect,'' the Small Business Administration (SBA) and other Federal agencies have interpreted these terms to represent an impact on 20 percent or more of the small entities in any industry and an effect equal to three percent or more of a business' annual sales.

Based on the past consultation history for the silvery minnow, wastewater discharges from municipal treatment plants are the primary activities anticipated to be affected by the designation of critical habitat that could affect small businesses. To be conservative, (i.e., more likely to overstate impacts than understate them), the economic analysis assumes that a unique company will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal).

First, the number of small businesses affected is estimated. As shown in Exhibit 1 below, the following calculations yield this estimate:

- Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations);
- Calculate the percent of businesses in the affected industry that are likely to be small;
- Calculate the number of affected small businesses in the affected industry;
- Calculate the percent of small businesses likely to be affected by critical habitat.

EXHIBIT 1.—ESTIMATED ANNUAL NUMBER OF SMALL BUSINESSES AFFECTED BY CRITICAL HABITAT DESIGNATION: THE ''SUBSTANTIAL'' TEST

Industry name	Sanitary services SIC 4959
Annual number of affected businesses in industry:	
By formal consultation	0.13
(Equal to number of annual consultations): [1]	
By informal consultation	0.75
Total number of all businesses in industry within study area	6
Number of small businesses in industry within study area	6
Percent of businesses that are small (Number of small businesses)/(Total Number of businesses)	100%

EXHIBIT 1.—ESTIMATED ANNUAL NUMBER OF SMALL BUSINESSES AFFECTED BY CRITICAL HABITAT DESIGNATION: THE ''SUBSTANTIAL'' TEST—Continued

Industry name	Sanitary services SIC 4959
Annual number of small businesses affected (Number affected businesses) * (Percent of small businesses)	0.88
Annual percentage of small businesses affected (Number of small businesses affected)/(Total number of small businesses); >20 percent is substantial.	15%

[1] Note that because these values represent the probability that small businesses will be affected during a one-year time period, calculations may result in fractions of businesses. This is an acceptable result, as these values represent the probability that small businesses will be affected.

This calculation reflects conservative assumptions and nonetheless yields an estimate that is still far less than the 20 percent threshold that would be considered ''substantial.'' As a result, this analysis concludes that a significant economic impact on a substantial number of small entities will *not* result from the designation of critical habitat for the silvery minnow. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

Costs of critical habitat designation to small businesses consist primarily of the cost of participating in section 7 consultations and the cost of project modifications. To calculate the likelihood that a small business will experience a significant effect from critical habitat designation for the silvery minnow, the following calculations were made:

- Calculate the per-business cost. This consists of the unit cost to a third party of participating in a section 7 consultation (formal or informal) and the unit cost of associated project modifications. To be conservative, the economic analysis uses the high-end estimate for each cost.
- Determine the amount of annual sales that a company would need to have for this per-business cost to constitute a ''significant effect.'' This is calculated by dividing the per-business cost by the three percent ''significance'' threshold value.
- Estimate the likelihood that small businesses in the study area will have annual sales equal to or less than the threshold amount calculated above. This is estimated using national statistics on the distribution of sales within industries.
- Based on the probability that a single business may experience significant effects, calculate the expected value of the number of businesses likely to experience a significant effect.
- Calculate the percent of businesses in the study area within the affected industry that are likely to be affected significantly.

Calculations for costs associated with designating critical habitat for the silvery minnow are provided in Exhibit 2 below.

EXHIBIT 2.—ESTIMATED ANNUAL EFFECTS ON SMALL BUSINESSES: THE ''SIGNIFICANT EFFECT'' TEST

Industry	Sanitary services SIC 4959	
	Formal consultations with project modifications	Informal consultations
Annual Number of Small Businesses Affected (From Exhibit 8–1)	0.13	0.75
Per-Business Cost	$34,100	$2,900
Level of Annual Sales Below Which Effects Would Be Significant (Per-Business Cost/3%)	$1,136,667	$96,667
Probability That Per-Business Cost Is Greater Than 3% of Sales for Small Business [1]	48%	3%
Probable Annual Number of Small Businesses Experiencing Significant Effects (Number Small Businesses)* (Probability of Significant Effect).	0.06	0.02
Total Annual Number of Small Businesses Bearing Significant Costs in Industry	0.08	
Total Annual Percentage of Small Businesses Bearing Significant Costs in Industry	1.4%	

[1] This probability is calculated based on national industry statistics obtained from the Robert Morris Associated Annual Statement of Studies: 2001–2002, which provides data on the distribution of annual sales in an industry within the following ranges: $0–1 million, $1–3 million, $3–5 million, $5–10, $10–25 million, and $25+ million. This analysis uses the ranges that fall within the SBA definition of small businesses (i.e., for industries in which small businesses have sales of less than $5.0 million, it uses $0–1 million, $1–3 million, and $3–5 million) to estimate a distribution of sales for small businesses. It then calculates the probability that small businesses have sales below the threshold value using the following components: (1) All small businesses (expressed as a percentage of all small businesses) in ranges whose upper limits fall below the threshold value experience the costs as significant; (2) for the range in which the threshold value falls, the percentage of companies in the bin that fall below the threshold value is calculated as [(threshold value − range minimum)/(bin maximum − range minimum)] × percent of small businesses captured in range. This percentage is added to the percentage of small businesses captured in each of the lower ranges to reach the total probability that small businesses have sales below the threshold value. Note that in instances in which the threshold value exceeds the definition of small businesses (i.e., the threshold value is $10 million and the definition of small businesses is sales less than $5.0 million), all small businesses experience the effects as significant.

Because the costs associated with designating critical habitat for the silvery minnow are likely to be significant for less than one small businesses per year (approximately one percent of the small businesses in the sanitary services industry) in the affected counties, the economic analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the silvery minnow. This would be true even if all of the effects of section 7 consultation on these activities were attributed solely to the critical habitat designation.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We have a very good consultation history for silvery minnow; thus, we can describe the kinds of actions that have undergone consultations. Within the middle Rio Grande proposed critical habitat unit, the BLM has the highest likelihood of any Federal agency to undergo section 7 consultation for actions relating to energy supply, distribution, or use. However, since 1994, the BLM has not conducted any consultations for resource management plans that related to energy supply, distribution, or use. We do not anticipate the development of oil and gas leases within the area we are proposing to designate as critical habitat (J. Smith, pers. comm. 2001). Nevertheless, if we were to consult on a proposed BLM energy-related action, the outcome of that consultation likely would not differ from the BLM's policy of not allowing oil and gas development within the 100-year floodplain. For these reasons, we do not anticipate, this rule will be a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of the proposed listing and designation of critical habitat for the silvery minnow. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. A copy of this assessment is available by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Based on the above assessment, the Service finds that this proposed rule designating critical habitat for the silvery minnow does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies in New Mexico and Texas (i.e., during the EIS scoping period). We will continue to coordinate any future designation of critical habitat for the silvery minnow with the appropriate agencies.

We do not anticipate that this regulation will intrude on State policy or administration, change the role of the Federal or State government, or affect fiscal capacity. For example, we have conducted one formal consultation with the Corps and BOR, and a non-Federal agency (e.g., Middle Rio Grande Conservancy District) over actions related to water operations on the middle Rio Grande (Service 2001b). Although this consultation was conducted after critical habitat designation for the silvery minnow was removed pursuant to court order, we do not believe that this designation of critical habitat will have significant Federalism effects. For example, in the recent formal section 7 consultation, the Middle Rio Grande Conservancy District's regulatory burden requirement was only affected to the extent that they were acting as the United States' agent over the operation and maintenance of facilities. If this critical habitat designation is finalized, Federal agencies also must ensure, through section 7 consultation with us, that their activities do not destroy or adversely modify designated critical habitat. Nevertheless, we do not anticipate that the amount of supplemental instream flow, provided by past consultations (e.g., Service 2001b), will increase because an area is designated as critical habitat. This rule also will not change the appropriation of water rights within the area proposed to be designated as critical habitat. For these reasons, we do not anticipate that the designation of critical habitat will change State policy or administration, change the role of the Federal or State government, or affect fiscal capacity.

Within the 300-foot lateral width, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any action that lacked Federal involvement would not be affected by the critical habitat designation. Should a Federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The designation may have some benefit to these governments in that the areas essential to the conservation of the species would be clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species would be identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the silvery minnow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new

record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless they display a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the Ninth Circuit *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), *cert. denied,* 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the silvery minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. Additionally, on November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* Civ. Nos. 99–870, 99–872 and 99–1445M/RLP (Consolidated) set aside the July 9, 1999, critical habitat designation and ordered us to issue within 120 days both an EIS and a new proposed rule designating critical habitat for the silvery minnow. We have prepared the draft EIS pursuant to that court order.

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Indian Pueblos and Tribes must be related to on a Government-to-Government basis. Therefore, we are soliciting information from the Indian Pueblos and Tribes and will arrange meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Field Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.95(e) by revising critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

Rio Grande Silvery Minnow (*Hybognathus amarus*)

(1) Proposed critical habitat is depicted for Socorro, Valencia, Bernalillo, and Sandoval, Counties, New Mexico; on the map and as described below.

(2) For each river reach proposed, the up- and downstream boundaries are described below. Proposed critical habitat includes the stream channels within the identified river reaches and areas within these reaches included within the existing levees, or if no levees are present, then within a lateral distance of 91.4 m (300 ft) on each side of the river width at bankfull discharge. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain.

(3) Within these areas the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following:

(i) A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to: backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity necessary for each of the particular silvery minnow life-history stages in appropriate seasons (e.g., the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow, and a relatively constant winter flow (November to February));

(ii) The presence of eddies created by debris piles, pools, or backwaters, or other refuge habitat (e.g., connected oxbows or braided channels) within unimpounded stretches of flowing water of sufficient length (i.e., river miles) that provide a variation of habitats with a wide range of depth and velocities;

(iii) Substrates of predominantly sand or silt; and

(iv) Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded conditions (decreased dissolved oxygen, increased p.H., etc.).

(4) Proposed critical habitat is depicted on the following map for the Middle Rio Grande, which includes the area from Cochiti Reservoir downstream to the Elephant Butte Dam, Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The stream reaches in the middle Rio Grande include:

(i) Jemez Canyon Reach—8 km (5 mile) of river immediately downstream of Jemez Canyon Reservoir to the confluence of the Rio Grande;

(ii) Cochiti Diversion Dam to Angostura Diversion Dam (Cochiti Reach)—34 km (21 mile) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam;

(iii) Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—61 km (38 mile) of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam;

(iv) Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—90 km (56 mi) of river immediately downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam; and

(v) San Acacia Diversion Dam to the Elephant Butte Dam (San Acacia Reach)–147 km (92 mi) of river immediately downstream of the San Acacia Diversion Dam to the Elephant Butte Dam.

(vi) Map Follows:

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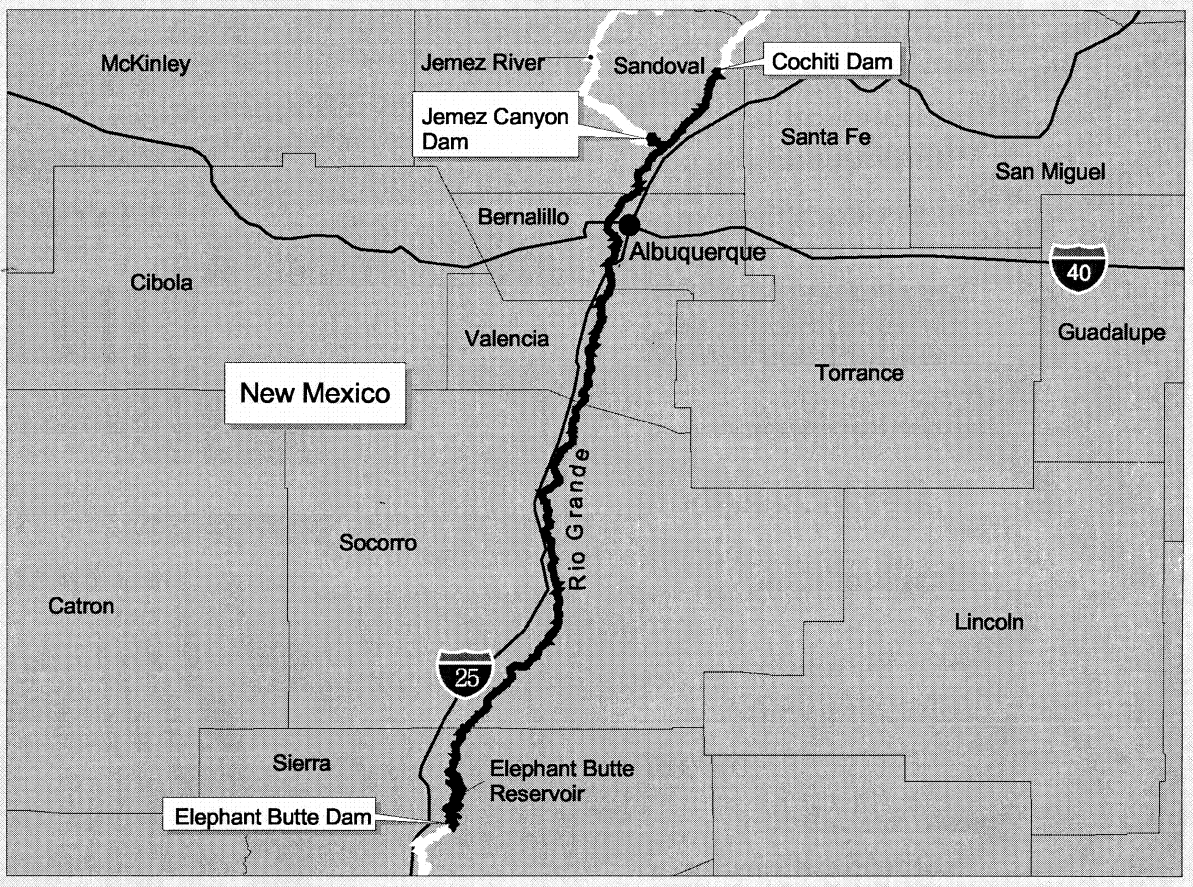
General Location of Proposed Critical Habitat for the Rio Grande Silvery Minnow

(Hybognathus amarus)

Middle Rio Grande Reach



Use Constraints: This map is intended to be used as a guide to the general area of proposed Rio Grande silvery minnow critical habitat. Included in the designation is a riparian zone that runs up to 300 feet on each side of the designated reaches of the Rio Grande and Jemez River. Lines portraying critical habitat have been made thicker for presentation purposes only.

BILLING CODE 4310–55–C

(5) This designation does not include the ephemeral or perennial irrigation canals and ditches outside of natural stream channels, including the low flow conveyance channel that is adjacent to a portion of the stream reach within the middle Rio Grande (i.e., downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the Elephant Butte Dam).

(6) The area inundated by Elephant Butte Reservoir does not provide those physical or biological features essential to the conservation of the species and is specifically excluded by definition from the proposed critical habitat. We define the reservoir as that part of the body of water impounded by the dam where the storage waters are lentic (relatively still waters) and not part of the lotic (flowing water) river channel.

(7) Lands located within the exterior boundaries of the proposed critical habitat designation (i.e., within the existing levees, or if no levees are present, then within a lateral distance of 91.4 m (300 ft) on each side of the stream width at bankfull discharge), but that are not considered critical habitat and are therefore excluded by definition, include existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments.

* * * * *

Dated: May 23, 2002

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–14141 Filed 6–5–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
June 6, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 200

Nonprofit Organization Participation in Certain FHA Single Family Activities; Placement and Removal Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4585–F–02]

RIN 2502–AH49

Nonprofit Organization Participation in Certain FHA Single Family Activities; Placement and Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes regulatory placement and removal procedures for HUD's Nonprofit Organization Roster. The Roster lists nonprofit organizations that HUD has determined are qualified to participate in certain specified Federal Housing Administration (FHA) single family activities. These activities may include acting as a mortgagor; purchasing HUD's Real Estate Owned (REO) Properties (HUD Homes) at a discount; providing secondary financing; and imposing legal restrictions on conveyance as part of affordable housing programs. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. This final rule follows publication of a September 17, 2001, proposed rule and takes into consideration the two public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9266, Washington, DC 20410–8000; phone (202) 708–2700 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's September 17, 2001, Proposed Rule

On September 17, 2001 (66 FR 48080), HUD published a proposed rule to establish regulatory placement and removal procedures for the Federal Housing Administration (FHA) Nonprofit Organization Roster. The Roster lists nonprofit organizations that HUD has determined are qualified to participate in certain specified FHA single family activities. FHA maintains the Roster to provide a means for mortgagees and the general public to verify if nonprofit organizations are qualified to participate in specified FHA activities. This Roster is an important part of the FHA Single Family Mortgage Insurance program because nonprofit organizations that are placed on the Roster are considered to be assets to FHA in increasing homeownership opportunities and protecting FHA insurance funds.

Nonprofit organizations are important participants in HUD's efforts to further affordable housing opportunities for low- and moderate-income persons through the FHA single family programs. FHA's single family regulations recognize a special role for nonprofit organizations in conjunction with the origination of new mortgages, disposition of homes by HUD, imposition of legal restrictions on conveyance as part of affordable housing programs, and provision of secondary financing.

The special role provided for nonprofit organizations in the FHA regulations is intended only for those organizations that are financially viable and actively involved in the furthering of affordable housing in their communities. However, currently there are no regulatory procedures for placing a nonprofit organization on, or for removing a poorly performing nonprofit organization from, the Roster. Accordingly, HUD issued the September 17, 2001, proposed rule to establish such policies, and to solicit public comment on the proposed regulatory changes. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. The preamble to the September 17, 2001, proposed rule provides additional details regarding the proposed placement and removal procedures.

II. This Final Rule

This final rule follows publication of the September 17, 2001, proposed rule, and takes into consideration the two public comments received on the proposed rule. The public comment period on the rule closed on November 16, 2001. Comments were received from a State housing authority and a nonprofit housing corporation. After careful consideration of the public comments, HUD has decided to adopt the September 17, 2001, proposed rule without change.

III. Discussion of Public Comments Received on the September 17, 2001, Proposed Rule

Comment: Support for proposed rule. The State housing authority supported the proposed rule. The commenter agreed that the placement and removal procedures would better protect participants in the FHA single family programs and safeguard FHA insurance funds. The commenter wrote that the proposed rule would assist housing finance agencies in identifying qualified and financially viable nonprofit organizations for various collaborative ventures. The commenter also wrote that the proposed recertification process would help keep the Roster current, and would not impose an undue administrative burden on nonprofit organizations.

HUD Response. HUD appreciates the commenter's support. HUD agrees that the regulatory procedures will help ensure that only those nonprofit organizations that are financially viable and actively involved in furthering affordable housing are eligible to participate in FHA programs. As noted, HUD has adopted the September 17, 2001, proposed rule without change.

Comment: Reapplication process would be unduly burdensome. The nonprofit housing corporation wrote that the proposed two-year reapplication process for placement on the Roster would be unduly burdensome to nonprofit organizations. Under HUD's proposal, the placement of the nonprofit organization on the Roster would expire in two years. The nonprofit organization would be required to reapply for placement on the Roster before the expiration of the two-year period. The commenter wrote that nonprofit organizations typically have limited administrative funds, and may not have the resources to handle a reapplication process every two years.

The public commenter recommended that the reapplication process should be structured to only require the submission of any information that has changed since the submission of the nonprofit organization's original application. The commenter suggested that HUD notify nonprofit organizations 45 to 60 days in advance of the two-year expiration date, and provide the nonprofit with a reapplication form. Nonprofit organizations would be required to return the form within a time period specified by HUD. The reapplication form would only require that nonprofit organizations detail any significant changes to the nature and scope of their work, or to the relevant homeownership programs they operate

(or to indicate that no such changes have occurred).

HUD Response. HUD has not revised the proposed rule in response to the commenter's suggestion. The recertification process helps to ensure that participating nonprofit organizations remain in compliance with FHA requirements and are actually conducting the activities described in their affordable housing plans. As part of the recertification process, nonprofit organizations must submit a detailed description of the activities they have performed (*see* Attachment 5 to HUD Mortgagee Letter 00–8, ''Nonprofit Agency Participation in Single Family FHA Activities'').[1] This property listing format allows FHA to conduct a comprehensive review of nonprofit performance, and to evaluate such important factors as net development cost and the sales price of resold properties. Relying on the nonprofit agency to advise FHA of any significant changes, as the public commenter suggests, would not permit FHA to conduct these detailed reviews. Accordingly, HUD believes that the commenter's recommendation would be an insufficient method for identifying deficiencies in the nonprofit's program. Further, HUD notes that nonprofit organizations that are recipients of HUD grants, or participate in other HUD activities, are required to submit regular performance reports. The recertification requirement, therefore, is a familiar process for these nonprofit organizations, and does not impose a new administrative requirement.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Department's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Paperwork Reduction Act

The information collection requirements described in § 200.194 have been approved by OMB in connection with Mortgagee Letter 00–8, and assigned OMB Control Number 2502–0540. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This final rule establishes placement and removal procedures for HUD's Nonprofit Organization Roster. The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although many nonprofit organizations affected by this rule are small entities, compliance with the rule is not expected to have a substantive economic impact. The rule does not discriminate against small entities or disadvantage them competitively.

The final rule establishes the procedure by which a nonprofit organization, who has violated FHA single family mortgage insurance program requirements, may be removed from HUD's Nonprofit Organization Roster. Accordingly, to the extent that the final rule has an impact on small entities, it will be as a result of actions taken by small entities themselves—that is, violation of single family program regulations and requirements. Further, the final rule provides several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants a nonprofit organization, selected for removal from the Roster, the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers for the principal FHA single family programs are 14.117 and 14.133.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Add subpart F to read as follows:

[1] A copy of Mortgage Letter 00–8 may be obtained via the HUD Web site at *http://www.hud.gov.*

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Nonprofit Organizations

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

Nonprofit Organization

§ 200.194 Placement of nonprofit organization on Nonprofit Organization Roster.

(a) *Nonprofit Organization Roster.* HUD maintains a roster of nonprofit organizations that are qualified to participate in certain specified FHA activities. In order to be recognized as a nonprofit organization for purposes of single family regulations in this chapter, an organization must:

(1) Be included in the Roster; and

(2) Comply with any requirements stated in a specific applicable provision of the single family regulations in this chapter.

(b) *Application.* To be included in the Roster, a nonprofit organization must apply to HUD using an application (or materials) in a form prescribed by HUD (which may require an affordable housing program narrative for the activities the nonprofit organization proposes to carry out). The nonprofit organization must specify in its application the FHA activities it proposes to carry out.

(c) *HUD response to application.* HUD's review of the application will result in one of the following:

(1) Approval of the nonprofit organization to participate in all, or some, of the FHA activities specified in its application and the addition of the nonprofit organization to the Roster.

(2) Rejection due to deficiencies in the application. HUD will provide the nonprofit organization with a period to correct these deficiencies.

(3) Rejection due to the nonprofit organization's failure to submit a program that complies with applicable single family regulations in this chapter, Mortgagee Letters, or other standards or instructions issued by HUD.

(d) *Reapplication after two years.* The placement of a nonprofit organization on the Roster expires after two years. The nonprofit organization must reapply for placement on the Roster, in accordance with paragraph (b) of this section, before expiration of the two-year period.

§ 200.195 Removal of nonprofit organization from Nonprofit Organization Roster.

(a) *Cause for removal.* HUD may remove a nonprofit organization from the FHA Nonprofit Organization Roster established under § 200.194. Removal may be for any cause that HUD determines to be detrimental to FHA or any of its programs, including but not limited to:

(1) Failure to comply with applicable single family regulations in this chapter, Mortgagee Letters or other written instructions or standards issued by HUD;

(2) Failure to comply with applicable Civil Rights requirements;

(3) Holding a significant number of FHA-insured mortgages that are in default, foreclosure, or claim status (in determining the number considered ''significant,'' HUD may compare the number of insured mortgages held by the nonprofit organization against the similar holdings of other nonprofit organizations);

(4) Being debarred or suspended, subject to a limited denial of participation, or otherwise sanctioned by HUD;

(5) Failure to further all objectives described in the affordable housing program narrative;

(6) Misrepresentation or fraudulent statements; or

(7) Failure to respond within a reasonable time to HUD inquiries, including recertification requests or other requests for further documentation.

(b) *Procedure for removal.* A nonprofit organization that is debarred or suspended or subject to a limited denial of participation will be automatically removed from the FHA Nonprofit Organization Roster. In all other cases, the following procedure for removal applies:

(1) HUD will give the nonprofit organization written notice of the proposed removal. The notice will include the reasons for the proposed removal and the duration of the proposed removal.

(2) The nonprofit organization will have 20 days from the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) A HUD official will review the appeal and provide an informal conference if requested. The HUD official will send a response either affirming, modifying, or canceling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days of receiving the response, or, if the nonprofit organization has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the nonprofit organization.

(4) If the nonprofit organization does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the initial removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the Roster after removal.* A nonprofit organization that has been removed from the FHA Nonprofit Organization Roster may apply for placement on the Roster (in accordance with § 200.194) after the nonprofit organization's removal from the Roster has expired. An application will be rejected if the period for the nonprofit organization's removal from the Roster has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a nonprofit organization, as provided in 24 CFR part 24, or from seeking any other remedy against a nonprofit organization available to HUD by statute or otherwise.

Dated: May 22, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–14090 Filed 6–5–02; 8:45 am]

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Federal Register

Vol. 67, No. 109

Thursday, June 6, 2002

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FEDERAL REGISTER PAGES AND DATE, JUNE

38193–38340 3
38341–38582 4
38583–38840 5
38841–39240 6

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7568 38583
7569 38585

5 CFR

Proposed Rules:
831 38210
842 38210
870 38210
890 38210

8 CFR

100 38341
103 38341
236 38341
245a103 38341
274a 38341
299 38341
Proposed Rules:
241 38324

9 CFR

77 38841

10 CFR

430 38324
Proposed Rules:
50 38427

11 CFR

100 38353
104 38353
113 38353

12 CFR

25 38844
208 38844
369 38844
1710 38361
Proposed Rules:
702 38431
741 38431
747 38431

14 CFR

39 ..... 38193, 38371, 38587, 38849, 38852
97 ..... 38195, 38197
1260 38855
Proposed Rules:
39 38212

15 CFR

732 38855
734 38855
738 38855
740 38855
742 38855
748 38855
770 38855
772 38855
774 38855
Proposed Rules:
50 38445

17 CFR

3 38869
40 38379
Proposed Rules:
240 38610

19 CFR

12 38877
Proposed Rules:
201 38614
204 38614
206 38614
207 38614

20 CFR

416 38381

21 CFR

822 38878
Proposed Rules:
101 38913

22 CFR

41 38892
42 38892

24 CFR

200 39238

26 CFR

1 38199
Proposed Rules:
1 38214
41 38913
48 38913
145 38913

27 CFR

Proposed Rules:
4 38915

30 CFR

18 38384
44 38384
46 38384
48 38384
49 38384
56 38384
57 38384
70 38384
71 38384
75 38384
90 38384
Proposed Rules:
917 ..... 38446, 38621, 38917, 38919

32 CFR

Proposed Rules:
320.....38448
806b.....38450

33 CFR

1.....38386
117.....38388
165 .....38389, 38390, 38394, 38590, 38593, 38595

Proposed Rules:
110.....38625
165.....38451

39 CFR

20.....38596

40 CFR

52.....38396, 38894
63.....38200
71.....38328
80.....38338, 38398
144.....38403
146.....38403
180.....38407, 38600
271.....38418

Proposed Rules:
52 .....38218, 38453, 38626, 38630, 38924
63.....38810
80.....38453
141.....38222
413.....38752
433.....38752
438.....38752
463.....38752
464.....38752
467.....38752
471.....38752

41 CFR

Ch. 301 38604
101-9.....38896
101-192.....38896

43 CFR

422.....38418
3730.....38203
3820.....38203
3830.....38203
3850.....38203

47 CFR

15.....38903
73 .....38206, 38207, 38423

Proposed Rules:
73 .....38244, 38456, 38924

48 CFR

Proposed Rules:
29.....38552
52.....38552
1813.....38904
1847.....38908
1852.....38904, 38909

49 CFR

571.....38704
590.....38704
595.....38423

50 CFR

11.....38208
37.....38208
648.....38608, 38909

Proposed Rules:
17.....39106, 39206
223.....38459
226.....39106
660.....38245

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 6, 2002

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act:

Fish and wildlife; subsistence taking; published 5-7-02

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Commerce Control List—

Encryption controls; revisions and clarifications; Wassenaar Arrangement List of dual-use items; changes; published 6-6-02

COMMODITY FUTURES TRADING COMMISSION

Intermediaries; registration in futures industry; published 6-6-02

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Georgia; published 5-7-02

Water pollution control:

Ocean dumping; site designations—

Atlantic Ocean offshore Charleston, SC; published 5-7-02

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation:

Federal mail management; published 6-6-02

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act:

Fish and wildlife; subsistence taking; published 5-7-02

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Miscellaneous amendments; published 6-6-02

Federal Acquisition Regulation (FAR):

Commercial items—

Acquisition; published 6-6-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; published 5-2-02

Fairchild; published 4-17-02

Gulfstream; published 5-22-02

McDonnell Douglas; published 5-2-02

Pratt & Whitney; published 5-2-02

Rolls-Royce plc.; published 5-2-02

TREASURY DEPARTMENT

Customs Service

Merchandise, special classes:

Import retrictions—

Peru; archaeological and ethnological materials; published 6-6-02

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Federal claims collection; comments due by 6-10-02; published 4-11-02 [FR 02-08518]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Livestock and poultry disease control:

Infectious salmon anemia; indemnification; comments due by 6-10-02; published 4-11-02 [FR 02-08779]

CIVIL RIGHTS COMMISSION

Organizational structure, procedures, and program processes; comments due by 6-10-02; published 4-10-02 [FR 02-07925]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Sea turtle conservation—

Hawaii State waters; sea turtle interactions with fishing activities; environmental impact statement; comments due by 6-10-02; published 5-9-02 [FR 02-11636]

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 6-10-02; published 5-24-02 [FR 02-13240]

DEFENSE DEPARTMENT

Acquisition regulations:

Defense supply contracts; Balance of Payments Program; comments due by 6-14-02; published 4-15-02 [FR 02-09051]

Civilian health and medical program of uniformed services (CHAMPUS):

Pharmacy Benefits Program; implementation; comments due by 6-11-02; published 4-12-02 [FR 02-08615]

EDUCATION DEPARTMENT

Federal claims collection:

Administrative wage garnishment; comments due by 6-12-02; published 4-12-02 [FR 02-08969]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act) and natural gas companies (Natural Gas Act):

Natural gas pipelines and transmitting public utilities (transmission providers); standards of conduct; technical conference; comments due by 6-14-02; published 5-17-02 [FR 02-11995]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Montana; comments due by 6-10-02; published 5-9-02 [FR 02-11448]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 6-13-02; published 5-14-02 [FR 02-11823]

Illinois; comments due by 6-14-02; published 5-15-02 [FR 02-12006]

Minnesota; comments due by 6-12-02; published 5-13-02 [FR 02-11734]

Pennsylvania; comments due by 6-14-02; published 5-15-02 [FR 02-12144]

West Virginia; comments due by 6-10-02; published 5-10-02 [FR 02-11723]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acephate, etc.; comments due by 6-14-02; published 4-15-02 [FR 02-09070]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Presubscribed interexchange carrier charges; comments due by 6-14-02; published 5-15-02 [FR 02-12097]

Repetitious or conflicting applications; comments due by 6-14-02; published 5-15-02 [FR 02-12062]

Radio stations; table of assignments:

California; comments due by 6-10-02; published 5-1-02 [FR 02-10786]

Montana and Wyoming; comments due by 6-10-02; published 5-2-02 [FR 02-10837]

FEDERAL ELECTION COMMISSION

Contribution and expenditure limitations and prohibitions:

Candidate debates; comments due by 6-10-02; published 5-9-02 [FR 02-11628]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Tungsten-iron-nickel-tin shot approval as nontoxic for waterfowl and coots hunting; comments due by 6-10-02; published 5-10-02 [FR 02-11767]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Nonimmigrant classes:

Change of status from B to F-1 or M-1 prior to pursuing a course of study; comments due by 6-11-02; published 4-12-02 [FR 02-08926]

JUSTICE DEPARTMENT

Immigration:

Aliens—

Aliens ordered removed from U.S. to surrender to INS; comments due by 6-10-02; published 5-9-02 [FR 02-11141]

National Stolen Passenger Motor Vehicle Information

System; implementation; comments due by 6-10-02; published 4-9-02 [FR 02-08522]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Signs, signals, and barricades; comments due by 6-14-02; published 4-15-02 [FR 02-08773]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public availbility and use:

NARA facilities; addresses and hours; comments due by 6-14-02; published 4-15-02 [FR 02-09018]

POSTAL SERVICE

Postage meters:

License holders; information release procedures; comments due by 6-10-02; published 5-9-02 [FR 02-11507]

Manufacturing and distribution authorization; comments due by 6-10-02; published 5-9-02 [FR 02-11506]

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Insurance company separate accounts registered as unit investment trusts offering variable annuity contracts; costs and expenses disclosure; comments due by 6-14-02; published 4-23-02 [FR 02-09456]

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Testing laboratories; comments due by 6-10-02; published 4-9-02 [FR 02-08359]

Correction; comments due by 6-10-02; published 4-18-02 [FR C2-08359]

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Buffalo Captain of Port Zone, NY; safety zones; comments due by 6-10-02; published 5-10-02 [FR 02-11660]

Port Lavaca-Point Comfort et al., TX; security zones; comments due by 6-10-02; published 5-10-02 [FR 02-11719]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 6-11-02; published 5-17-02 [FR 02-12322]

BAE Systems (Operations) Ltd.; comments due by 6-14-02; published 5-15-02 [FR 02-12071]

Bell; comments due by 6-10-02; published 4-10-02 [FR 02-08597]

Boeing; comments due by 6-10-02; published 4-9-02 [FR 02-08280]

Bombardier; comments due by 6-12-02; published 5-13-02 [FR 02-11942]

Class E airspace; correction; comments due by 6-10-02; published 5-2-02 [FR 02-10937]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 6-10-02; published 5-15-02 [FR 02-12067]

Eurocopter France; comments due by 6-10-02; published 4-10-02 [FR 02-08596]

MD Helicopters, Inc.; comments due by 6-11-02; published 4-12-02 [FR 02-08595]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials transportation:

Lithium batteries; comments due by 6-14-02; published 4-2-02 [FR 02-07959]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Wine; labeling and advertising—

Petite sirah and zinfandel; new grape variety names; comments due by 6-10-02; published 4-10-02 [FR 02-08524]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Automated Clearing House; Federal agency participation; comments due by 6-10-02; published 4-11-02 [FR 02-08885]

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 ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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/nara005.html*. Some laws may not yet be available.

H.R. 1840/P.L. 107–185

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. (May 30, 2002; 116 Stat. 587)

H.R. 4782/P.L. 107–186

To extend the authority of the Export-Import Bank until June 14, 2002. (May 30, 2002; 116 Stat. 589)

Last List May 31, 2002

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