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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–37–AD; Amendment 39–13097; AD 2003–07–01]

RIN 2120–AA64

Airworthiness Directives; Quality Aerospace, Inc. S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2000–11–16, which currently applies to certain Quality Aerospace, Inc. (Quality Aerospace) (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. AD 2000–11–16 requires you to repetitively inspect the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace or repair any lower spar cap where fatigue cracking is found; and report any fatigue cracking found. AD 2000–11–16 resulted from an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. Since AD 2000–11–16, additional airplanes have been identified that were manufactured with a similar design to those affected by the AD and a third repair option has been developed. This AD retains the repetitive inspections and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 2000–11–16, adds additional airplanes to the Applicability of the AD, and adds a third repair option. The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: This AD becomes effective on May 20, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, as of July 25, 2000 (65 FR 36055, June 7, 2000).

The Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, as of May 20, 2003.

ADDRESSES: You may get the service information referenced in this AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–37–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: Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused us to issue AD 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000). This AD requires the following on certain Quality Aerospace S2R series and Model 600 S2D airplanes:

- Repetitively inspect the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing or repairing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195 (62 FR 43296, August 18, 1997), which required accomplishing the following:

- Inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 2000–11–16 made the inspections required in AD 97–17–03 repetitive, added additional airplanes to the Applicability of the AD, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration.

AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071 (62 FR 36978, July 10, 1997), which required accomplishing the following:

- Inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 97–13–11 incorrectly referenced the Ayres Model S2R–R1340 airplanes as Model S2R–1340R. AD 97–17–03 corrected the model designation and retained the actions of AD 97–13–11.

What Has Happened Since AD 2000–11–16 To Initiate This Action?

Since AD 2000–11–16, FAA has identified additional airplanes with the same type design that should be added to the Applicability of the AD. The manufacturer has issued update service information that gives the owners/operators of the affected airplanes an additional repair option. We have also identified several minor typographical errors in AD 2000–11–16.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

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 Quality Aerospace (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on

November 8, 2002 (67 FR 68047). The NPRM proposed to supersede AD 2000–11–16 with a new AD that would:

- Retain the repetitive inspections and replacement (if necessary) requirements of AD 2000–11–16;
- Add an additional repair option of installing a splice block to improve the chances of salvaging a spar cap that has small cracks in the ¼-inch and 5/16-inch bolt holes; and
- Add additional airplanes to the Applicability of the AD.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: Reference Correct Standard for Magnetic Particle Inspection

What Is the Commenter's Concern?

One commenter states that the American Society for Testing Materials (ASTM) Standard referenced in the proposed AD, ASTM Standard E 1444–94A, should be changed to the updated ASTM Standard E 1444–01. The standard has been updated by the ASTM and the document referenced in the NPRM is outdated.

What Is FAA's Response to the Concern?

We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the reference change discussed above and minor editorial corrections. We have determined that these changes and 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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 1,015 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 each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	$417	$597	1,015 × $597 = $605,955.

We estimate the following costs to accomplish any necessary cold work of bolt holes 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 repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	$100	$160

We estimate the following costs to accomplish any necessary installation of a butterfly splice plate 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 installation:

Labor cost	Parts cost	Total cost per airplane
70 workhours × $60 = $4,200	$700	$4,900

We estimate the following costs to accomplish any necessary reaming of outer holes to 5/16-inch diameter 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 repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	None	$60

We estimate the following costs to accomplish any necessary drilling and reaming of outer holes and adding three holes to install a splice block 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 modification:

Labor cost	Parts cost	Total cost per airplane
65 workhours × $60 = $3,900	$4,100	$8,000

We estimate the following costs to accomplish any necessary spar cap replacement 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 replacement:

Labor cost per spar cap	Parts cost per spar cap	Total cost per spar cap
200 workhours × $60 = $12,000	$2,316	$14,316

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2000–11–16?

The differences between this AD and the cost impact of AD 2000–11–16 are:

• The addition of an optional repair to install a splice block; and

• The addition of 15 airplanes of similar design.

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 removing Airworthiness Directive (AD) 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000), and by adding a new AD to read as follows:

2003–07–01 Quality Aerospace, Inc. (Ayres Corporation formerly held Type Certificate (TC) No. A4SW): Amendment 39–13097; Docket No. 2001–CE–37–AD; Supersedes AD 2000–11–16, Amendment 39–11764.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a P/N 22507 lower spar cap on both the left and right wings:

Model	Serial Nos.	Group
(1) S–2R	5000R through 5099R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181.	1
(6) S2R–G10	G10–101 through G10–136, G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, and T34–234.	2
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R and 1416R through 2592R	3
(16) S2R–R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107, G1–108, and G1–109	4
(20) S2R–G10	G10–137, G10–139, and G10–142	4
(21) S2R–T34	T34–236, T34–237, and T34–238	4
(22) S2R–G1	G1–110 through G1–115	5
(23) S2R–G10	G10–143 through G10–165	5
(24) S2R–G6	G6–148 through G6–155	5
(25) S2RHG–T34	T34HG–101 and T34HG–102	5
(26) S2R–T15	T15–034 through T15–040	5
(27) S2R–T34	T34–239 through T34–270	5
(28) S2R–T45	T45–015	5
(29) S2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

Note 1: The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

Note 2: The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

Note 3: Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD.

(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 detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

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

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(iii) If using the magnetic particle method for the inspection, perform the inspection using the ''Inspection'' portion of the ''Accomplishment Instructions'' and ''Lower Splice Fitting Removal and Installation Instructions'' in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. You must follow American Society for Testing Materials (ASTM) E 1444–01, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. The inspection must be performed by or supervised by a Level 2 or Level 3 inspector certified for magnetic particle inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL-STD–410. CAUTION: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(iv) If using ultrasonic or eddy current methods for the inspection, a procedure must be sent to the FAA Atlanta Aircraft Certification Office (ACO) for approval prior to performing the inspection. Send your proposed procedure to the FAA Atlanta Aircraft ACO, Attn: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Repair or replace:

(A) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(B) Ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; or

(C) Install Kaplan Splice Blocks as defined in Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(D) Replace the affected spar cap in accordance with the maintenance manual.

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include:

(A) The airplane serial number and engine model number;

(B) The total number of flight hours on the lower spar cap that is cracked;

(C) Time on the spar cap since last inspection, if applicable;

(D) The procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;

(E) Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates;

(F) Indicate the time on the spar cap when the cold working or modifications were accomplished; and

(G) Indicate which bolt hole is cracked and the length of the crack.

Note 4: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 2000–11–16, which is superseded by this AD; or by AD 97–17–03, which was superseded AD 2000–11–16; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after May 20, 2003 (the effective date of this AD), unless already accomplished.

(3) Initial inspection: Required unless already accomplished (compliance with AD 2000–11–16, or AD 97–17–03, or AD97–13–11) within 50 flight hours after May 20, 2003 (the effective date of this AD) or upon the accumulation of these hours time-in-service (TIS) on each lower spar cap, whichever occurs later:

Airplane group	Lower spar cap hours TIS
(i) 1	2,000
(ii) 2	2,200
(iii) 3	6,400
(iv) 4	2,500
(v) 5	6,200
(vi) 6:	
	For S/N 5010R: 5,530
	For S/N 5038R: 5,900
	For S/N 5031R: 6,400
	For S/N 5047R: 6,400
	For S/N 5085R: 6,290

(4) Repetitive inspections: The following table gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS after the last inspection:

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(i) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	500	550	700
(A) No cracks found previously on wing spar; or			
(B) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or			
(C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inch diameter (or done as an option if never cracked) per CK–AG–29, Part I; or			
(D) Small cracks repaired through previous Alternative Methods of Compliance; or			
(E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spars is required			
(ii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	900	950	1,250
(A) No cracks found previously on wing spar; or			

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(B) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or (C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inch diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or (D) Small cracks repaired through previous Alternative Methods of Compliance; or (E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spar caps is required			
(iii) Cracked wing spar found during previous inspection with wing spar replacement	For all inspection methods (magnetic particle, ultrasonic, or eddy current), time for initial and repetitive inspection intervals start over when wing spar is replaced.		

Note 5: Aircraft S/Ns T45–007DC and T45–010DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

Note 6: If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to 5/16 inch diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the ¼-inch bolt hole to 5/16 inch diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

Note 7: Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow the repetitive inspection interval listed in paragraph (e)(4)(ii).

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

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

(2) Alternative methods of compliance approved in accordance with AD 2000–11–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 8: 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(h) *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 provided that:

(1) the hopper is empty;

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and

(3) flight into known turbulence is prohibited.

(i) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(i) The Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, as of July 25, 2000 (65 FR 36055, June 7, 2000).

(2) You may get copies from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. 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.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–11–16, Amendment 39–11764.

(k) *When does this amendment become effective?* This amendment becomes effective on May 20, 2003.

Issued in Kansas City, Missouri, on March 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7454 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927]

RIN 2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Notice of Availability

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of availability.

SUMMARY: On April 4, 2000, the FAA published a final rule limiting the number of commercial air tours that may be conducted in the Grand Canyon National Park Special Flight Rules Area (SFRA). This rule also contained a requirement that operators in the GCNP SFRA submit quarterly reports indicating the number of commercial air tours conducted during that time frame. The FAA has compiled this data and is making it publicly available by placing it in docket number FAA–99–5927, the docket for the final rule on Commercial Air Tour Limitations. This document also provides instruction on how to access that data both electronically and in person.

ADDRESSES: You may view a copy of the final rule, and the additional data on changes in operations, through the Internet at: *http://dms.dot.gov* and by searching under docket number ''5927''. You may also review the public docket

on this regulation in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 400 7th St., SW., Room 401, Washington, DC 20590.

You may also request a paper copy of the final rule or the additional data from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9685.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, (AFS–200) Federal Aviation Administration, Seventh and Maryland Streets, SW., Washington, DC, 20591. Telephone: (202) 267–3747, or by e-mail at *Gary.Davis@faa.gov.*

Issued in Washington, DC, on March 26, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–7804 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Reg. No. 4]

RIN 0960–AE02

Federal Old-Age, Survivors and Disability Insurance; Repeal of the Facility-of-Payment Provision

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our rules on benefit reduction for the family maximum to reflect enactment of two self-implementing provisions in the Social Security Independence and Program Improvements Act of 1994. The provisions repealed the facility-of-payment provision of the Social Security Act (the Act) and provided that reduction for the family maximum will be made prior to a temporary suspension for work when a non-working auxiliary or survivor beneficiary resides in a separate household from a working auxiliary or survivor beneficiary. These revisions are necessary to conform our regulations to current law. We have been paying benefits under these self-implementing provisions since January 1996.

EFFECTIVE DATE: The rule is effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Strauss, Social Insurance Specialist, Office of Payment Policy, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–7930, TTY 410–966–5609, or *regulations@ssa.gov* for information about these rules. For information on eligibility or filing for benefits, contact our national toll free number at 1–800–772–1213 or TTY at 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.ssa.gov.*

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations/.*

SUPPLEMENTARY INFORMATION:

The facility-of-payment provision established a simplified method to use in paying benefits when all of the following conditions applied:

- An individual receiving benefits as an auxiliary or survivor of an insured individual incurred a deduction in his or her benefits (for example, his or her earnings exceeded the earnings test exempt amount); and
- The maximum family benefit applied (the maximum family benefit is a limit on the total amount of monthly benefits which may be paid for any month to an insured individual and his or her auxiliaries or survivors); and
- All of the auxiliaries or survivors lived in the same household.

The facility-of-payment provision permitted us to continue paying the same amount to the household instead of withholding the amount of the deduction from the beneficiary who incurred the deduction and recalculating and redistributing the same amount of total family benefits to the other auxiliaries or survivors. The provision was enacted to relieve SSA of the need to engage in costly, time-consuming manual recalculations of benefits when the family would continue to receive the same amount of benefits.

However, because these recalculations are now automated, the withholding of benefits and redistribution to other family members is no longer a burdensome procedure and the simplified method is no longer needed.

Section 309(a) of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, repealed the facility-of-payment provision effective with benefits payable for months after December 1995. Deductions are now made from the monthly benefit of the beneficiary who is affected by the deductions, and the benefits are recalculated and redistributed to the other beneficiaries living in the same household. We are, therefore revising § 408.458 of our regulations to reflect that repeal.

In addition, we are revising our regulations at § 404.402 to reflect section 309(b) of Public Law 103–296 which provides that benefits will be reduced to meet the family maximum before benefits are suspended to a working auxiliary or survivor beneficiary who lives in a separate household from a non-working auxiliary or survivor beneficiary. This prevents potential overpayments to those in separate households and the need to recover them in the event that the working auxiliary stops working.

Regulatory Procedure

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing our regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for these rules. Good cause exists because these regulations simply reflect self-implementing statutory changes and do not involve the making of any discretionary policy. Therefore, we have determined that opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided by 5 U.S.C. 553(d). As explained above, these regulations merely reflect self-implementing statutory changes that were effective for all benefits payable after 1995.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 24, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

■ 2. Section 404.402 is amended by removing the word ''and'' after paragraph (b)(1)(v), by removing the period after paragraph (b)(1)(vi) and adding in its place a semi-colon and the word ''and'', and by adding a new paragraph (b)(1)(vii) to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

* * * * *

(b) * * *

(1) * * *

(vii) Before suspension of benefits due to earnings (see § 404.456), for benefits payable or paid for months after December 1995 to a non-working auxiliary or survivor who resides in a different household than the working auxiliary or survivor whose benefits are suspended.

* * * * *

■ 3. Section 404.458 is amended by adding a new first sentence to read as follows:

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

The provisions of this section apply only to benefits payable or paid for months before January 1996. * * *

[FR Doc. 03–7756 Filed 3–31–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part I

RIN 2900–AI95

Eligibility for Burial of Adult Children; Eligibility for Burial of Minor Children; Eligibility for Burial of Certain Filipino Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations to provide a list of those individuals who are eligible for burial in a national cemetery. The final rule specifies that the burial of adult children of eligible persons in national cemeteries with available space is limited to those unmarried adult children of any age who became permanently incapable of self-support because of a physical or mental disability incurred before their reaching the age of 21 years, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution. The final rule also specifies that the burial of minor children of eligible persons is limited to unmarried children under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution. Lastly, this final rule recognizes the eligibility for burial of certain Philippine Commonwealth Army veterans in national cemeteries. This final rule is necessary to conform the regulations to statutory provisions.

DATES: *Effective Date:* May 1, 2003.

Applicability Date. The provisions of this regulation shall apply to all applications for interment or memorialization of an adult child or minor child received by VA on or after the effective date of this regulation. Pursuant to Public Law 106–419, the provisions of this regulation shall apply to requests for interment or memorialization of certain Filipino veterans whose deaths occurred on or after November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Telephone: (202) 273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 16, 2002, the National Cemetery Administration (NCA) published in the **Federal Register** (67 FR 34884) a proposed rule to implement the provisions of 38 U.S.C. 2402. The provisions of 38 U.S.C. 2402 set forth eligibility requirements for burying the remains of persons in national cemeteries with available space under VA's jurisdiction. The final rule, at 38 CFR 1.620, states a list of those individuals who are eligible for burial in a national cemetery pursuant to VA's statutory authority.

VA has discretion under 38 U.S.C. 2402(5) to determine which unmarried adult children of persons listed in paragraphs (1) through (4) and (7) are eligible to be buried in such cemeteries. The provisions of 38 CFR 1.620(c) currently specify only that an unmarried adult child of an eligible person must have been physically or mentally disabled and incapable of self-support to be eligible for burial. The final rule amends § 1.620 to specify that, to be eligible, an unmarried adult child of any age must have become permanently incapable of self-support because of a physical or mental disability that the child incurred before reaching the age of 21 years, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution. We believe that eligibility for burial of unmarried adult children under 38 U.S.C. 2402(5) should be limited to persons who have been continuously dependent on the person upon whom their eligibility is based.

The final rule amends § 1.620 to clarify that, to be eligible, a minor child of an eligible person must be unmarried and under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

Additionally, the final rule amends § 1.620 by adding a new paragraph to recognize the eligibility for burial of certain Philippine Commonwealth Army veterans in national cemeteries.

To be eligible, a person whose death occurred on or after November 1, 2002, must have served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States. At time of death, the veteran must have been a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and have resided in the United States.

Comment on Proposed Rule

We provided a 60-day comment period that ended July 15, 2002. We received one written response by electronic mail during this period. The comment sought to clarify whether a minor child of an eligible person must be ''unmarried'' in order to be eligible for national cemetery burial. Although 38 U.S.C. 2402(5) does not specify that a ''minor child'' must be unmarried, 38 U.S.C. 101(4)(A) defines ''child'' for purposes of title 38, United States Code, as ''a person who is unmarried.'' For purposes of clarity and consistency with the governing statute, the final rule specifically requires that a minor child must be ''unmarried'' and under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

Based on the rationale set forth in this document and in the proposed rule, we are adopting its provisions as a final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments, nor will it require expenditures by the private sector.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for this document is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Collection of claims, Privacy, Security, Veterans.

Approved: January 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.620 is revised to read as follows:

§ 1.620 Eligibility for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse (which for purposes of this section includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), unmarried minor child (which for purposes of this section is limited to a child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution), and unmarried adult child (which for purposes of this section is limited to a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution) of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person, whose death occurred on or after November 1, 2000, with service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were

in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, if such person at the time of death—

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(2) Resided in the United States.

(Authority: 38 U.S.C. 501, 2402)

[FR Doc. 03–7697 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA183–4198a; FRL–7465–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on June 2, 2003, without further notice, unless EPA receives adverse written comment by May 1, 2003. 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 Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or Rose Quinto at (215) 814–2182 or via e-mail at *harris.betty@epa.gov* or *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compound (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On December 21, 2001, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO_X. This rulemaking pertains to five of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements are included in plan approvals (PA) or operating permits (OP) issued by PADEP.

The following table identifies the individual plan approval or operating permit that EPA is approving for each source.

PENNSYLVANIA—NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	OP or PA #	Source type	Major source pollutant
Lafarge Corporation	Lehigh	OP–39–0011B	Cement Facility	NO_X.
The Peoples Natural Gas Company	Cambria	OP–11–000–356	Natural Gas Reciprocating Engines	NO_X.
Horsehead Resource Development Company, Inc.	Carbon	OP–13–0001	Recycling Operation	NO_X.
Williams Generation Company	Luzerne	OP–40–0031A	Natural Gas Turbine	NO_X.
Pennsylvania Power and Light Company, Holtwood.	Lancaster	PA–36–2016	Steam Generating Station	NO_X.

A. Lafarge Corporation

Lafarge Corporation owns and operates a cement producing company. This facility is located in Lehigh County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–39–0011B to EPA as a SIP revision. This permit requires Lafarge Corporation and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. This permit contains firing rate limitations for the boiler of 37.5 gallons per hour of No. 2 oil, and 35.5 gallons per hour of No. 5 oil. The facility shall record the amount of the oil fired in the boiler in an hourly and yearly basis and submit to PADEP by March 31 of the following year. Based on a 30-day rolling average, the permit contains NO_X emission limits for the operation of the cement kilns without burning tires of 297.7 pounds per hour for Kiln No. 2, and 202.3 pounds per hour for Kiln No. 3. Also based on a 30-day rolling average, the

permit contains NO_X emission limits for the operation of the cement kilns, while burning tires, of 260.5 pounds per hour for Kiln No. 2 and 166.0 pounds per hour for Kiln No. 3. For both Kilns No. 2 and No. 3, the facility shall operate and maintain NO_X continuous emission monitors in conformance with 40 CFR Part 60, 25 Pa. Code Chapter 139 and PADEP's Continuous Source Monitoring Manual (CEM Manual). Monitoring and recording of exhaust gas flow shall be conducted. The facility shall maintain records in accordance with the recordkeeping requirements of 25 Pa. Code Chapter 129.95 and maintain a file containing all records and other data that are required to be collected pursuant to the various provisions of this permit. This file shall include, but is not limited to the following: all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this permit. All measurements, records, and other data required to be maintained, shall be retained for at least two years following the date on which such measurements, records or other data are recorded. All continuous emission monitoring (CEM) reports shall be submitted to PADEP within 30 days after each quarter but no later than the time frame established in the PADEP's latest CEM Manual. The facility shall keep a record of fuel usage and operating hours for each generator and maintained for at least two years, and made available to PADEP upon request. The generators shall be maintained and operated in accordance with the manufacturers' specifications.

B. The Peoples Natural Gas Company

The Peoples Natural Gas Company (PNG) is a natural gas utility and is considered a major NO_X emitting facility. PNG owns and operates the Rager Mountain/Laurel Ridge Compressor Station Complex located in Jackson Township, Cambria County, Pennsylvania. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–11–000–356 to EPA as a SIP revision. This permit requires PNG and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. The permit contains NO_X emission limits in pounds per hour per unit for three compressor engines of the facility: (1) Dresser-Clark—49.8, (2) Cooper-Superior—4.2, and (3) Ingersoll-Rand—3.0. The permit also contains operational limits for the three compressor engines: (1) Dresser-Clark—3 units with combined total hours of 7625, (2) Cooper-Superior—2 units with combined total hours of 7625, and (3) Ingersoll-Rand—2 units with combines total hours of 8784. The permit requires PNG to perform stack testing in accordance with 25 Pa. Code Chapter 139 regulations and PADEP's Source Testing Manual. Two copies of the stack test results shall be supplied to PADEP for review within 60 days of completion of testing.

C. Horsehead Resource Development Company, Inc.

Horsehead Resource Development Company, Inc. (HRD) is a recycling operation located in Palmerton, Carbon County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–13–0001 to EPA as a SIP revision. This permit requires HRD and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. Stack tests shall be performed in accordance with Chapter 139 of the Rules and Regulations of PADEP to show compliance with the NO_X and VOC emission rates of each kiln listed in the permit. The stack tests shall be performed while operating at the maximum rated capacity. Two copies of the complete stack test reports, including all operating conditions, shall be submitted to PADEP.

D. Williams Generation Company, Hazleton

Williams Generation Company—Hazleton is a cogeneration facility located in Luzerne, Pennsylvania and is considered a major NO_X emitting facility. The facility has a natural gas fired turbine with a water injection control. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–40–0031A to EPA as a SIP revision. This permit requires Williams Generation Company and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. This permit contains NO_X emission limits for the facility's combustion unit (turbine) of 252.4 allowable pounds per hour at any time, established pursuant to the best available control technology provision of 25 Pa. Code 127.83 (40 CFR, 52.1(j)(2)). The permit limits the facility to 252.4 tons per year of NO_X based on a 12 month rolling average. The facility must cease operation or obtain prior approval under applicable regulations if the facility exceeds this total annual emissions limit. The facility shall not operate more than 2,000 hours per year. This annual limit must be met on a rolling monthly basis over every consecutive 12-month period. The facility shall maintain the following records: (1) Data which clearly demonstrates that the heat input for the turbine never exceeds its rated capacity; (2) data which clearly demonstrates that the turbine never exceeds the operational limit of 2,000 hours per year on a 12-month rolling sum; (3) the records shall provide sufficient data to clearly demonstrate that the requirements of this operating permit are met; and (4) all records shall be maintained for at least two years and shall be made available to PADEP upon request. The permit requires the facility to install and operate a continuous monitoring system to monitor and record the fuel consumption and the water injection rate in the turbine. The permit also requires the facility to maintain a file containing all records and other data that are required to be collected pursuant to the various provisions of this permit and 25 Pa. Code Section 129.95, such that records provide sufficient data and calculations to clearly demonstrate that the requirements of 25 Pa. Code Sections 129.91–4 are met. The file shall include, but is not limited to all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this permit. All measurements, records and other data required to be maintained by the facility shall be retained for at least two years following the date on which such measurements, records or data are recorded.

E. Pennsylvania Power & Light Company, Holtwood

Pennsylvania Power & Light Company (PPL), Holtwood is a steam electric station located in Lancaster County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in a plan approval. On December 21, 2001, PADEP submitted plan approval No. PA–36–2016 to EPA as a SIP revision. PPL is subject to an interim NO_X emission limit of 1.4 lb/Mbtu for Boiler 17 imposed in the plan approval. This interim limit shall be based on hourly continuous emission monitoring data averaged on a 30-day rolling basis. A

final NO_X emission limit will be determined upon evaluation of one year's worth of emissions monitoring data. The final NO_X emission limit will be incorporated into an operating permit. Should the final limit in the operating permit differ from the interim limit established in the plan approval, the interim limit shall remain the applicable Federally enforceable requirement until such time as PADEP submits a SIP revision for this facility. The plan approval contains a limit of 131,000 gallons on the usage of No. 2 fuel oil in Auxiliary Boiler 3 during any consecutive 12-month period. The plan approval also contains a limit of 435 hours on the usage of No. 2 Coal Dryer during any consecutive 12-month period. The facility shall maintain records in accordance with 25 Pa. Code Section 129.95 requirements.

III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for the five major sources of NO_X listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. 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 SIP revision if adverse comments are filed. This direct final rule will be effective on June 2, 2003, without further notice unless we receive adverse comment by May 1, 2003. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the Commonwealth's source-specific RACT requirements to control NO_X from five individual sources may not be challenged later in proceedings to

enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

Thomas C. Voltaggio,

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 52.2020 is amended by adding paragraph (c)(196) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(196) Revisions pertaining to NO_X RACT for major sources submitted on December 21, 2001.

(i) Incorporation by reference.

(A) Letter submitted on December 21, 2001 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals or operating permits.

(B) Plan approval (PA); Operating permit (OP):

(*1*) Lafarge Corporation, Lehigh County, OP–39–0011B, effective May 19, 1997.

(*2*) The Peoples Natural Gas Company, Cambria County, OP–11–000–356, effective November 23, 1994.

(*3*) Horsehead Resource Development Company, Inc., Carbon County, OP–13–0001, effective May 16, 1995.

(*4*) Williams Generation Company, Hazleton, Luzerne County, OP–40–0031A, effective March 10, 2000.

(*5*) Pennsylvania Power and Light Company, Holtwood Steam Electric Station, Lancaster County, PA–36–2016, effective May 25, 1995.

(ii) Additional Material.

(A) Letter of October 15, 2002 from the Pennsylvania Department of Environmental Protection to EPA transmitting materials related to the RACT permits listed in paragraph (c)(196)(i) of this section.

(B) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(196)(i) of this section.

[FR Doc. 03–7642 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN214–1a; FRL–7470–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 8, 2001, the Indiana Department of Environmental Management (IDEM) submitted a request that EPA approve a revision to its shipbuilding and ship repair volatile organic compound (VOC) rules into the Indiana State Implementation Plan. The State submitted additional information on October 1, 2002. This revision changes exemption levels and compliance, recordkeeping and reporting requirements. EPA is approving these revisions because they are enforceable and, in some cases, more stringent than the existing rules.

DATES: This rule is effective on June 2, 2003, unless EPA receives relevant adverse written comments by May 1, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean EPA. ''You'' means the reader of this document.

Table of Contents

I. Background
II. What changes did the state include in this SIP Revision Request and what is EPA's analysis of these revisions?
III. Rulemaking action
IV. Statutory and Executive Order Reviews

I. Background

Shipbuilding and ship repair companies in Clark, Floyd, Lake, and Porter counties are required to comply with the VOC requirements in 326 Indiana Administrative Code (IAC) 8–12 and the national emission standards for hazardous air pollutants (NESHAPS) in title 40, part 63, subpart II.

IDEM states, in an October 1, 2002, letter from IDEM to EPA that it has identified one source in Clark County, Jeffboat, that is subject to both the NESHAPS and the VOC rule for shipbuilding and ship repair. In an effort to streamline some of the overlapping requirements between the NESHAPs and the VOC rule, IDEM revised its VOC rule to eliminate certain inconsistent requirements. This letter includes IDEM's interpretation of certain points in its rule as well as a table for use in determining the allowable thinning ratio (that is, the amount of generally 100% VOC solvent that can be added to a coating without it exceeding the allowable VOC content).

II. What Changes Did the State Include in This SIP Revision Request and What Is EPA's Analysis of These Revisions?

Indiana revised several sections in 326 IAC 8–12, its VOC rule for Shipbuilding and Ship Repair coating operations. A description of these revisions and EPA's evaluation of these revisions follows:

A. 326 IAC 8–12–2(1) Exemptions

Indiana increased the exemption level of any coating from 20 to 25 gallons per year, and reduced the total volume of all exempt coatings from 400 to 264 gallons per year. This revision is approvable because the total allowable annual volume of exempt coatings is reduced and the cutoffs are less than those in the NESHAPS.

B. 326 IAC 8–12–4(2)VOC Emission Limiting Requirements

This section has been revised to require that the general use coating emission limit be in effect for the entire year, instead of only May 1 through September 30. This revision is approvable because it extends the applicability of the general use coating limitation, and will limit VOC emissions from October through April.

The VOC emission limits for each coating category require that each coating (with no averaging between coatings) must comply with the limits on an as-applied (that is, including any thinner added) basis. This requirement is reinforced in IDEM's October 1, 2002, letter.

C. 326 IAC 8–12–5 Compliance Requirements

The compliance requirements in this section were replaced by the NESHAPS requirements in 40 CFR 63.784 and 40 CFR 63.785. These requirements include an equation to determine the maximum allowable thinning ratio. The emission limit, in units of grams VOC/liter of solids (as opposed to the pounds VOC/gallon units in Indiana's rule), is one of the terms in this equation. IDEM's October 1, 2002, letter includes a table that specifies the limits for each coating category in terms of grams VOC/liter of solids, thus facilitating use of this equation. This revision, therefore, improves the effectiveness of this rule by explicitly establishing how much thinner can be added to a coating without exceeding the applicable emission limit.

D. 326 IAC 8–12–6 Test Methods and Procedures

The test methods and procedures in this section were replaced by the NESHAPS requirements in 40 CFR 63.786. The NESHAPS test methods include the use of EPA's Method 24 for determining VOC content and are therefore approvable.

E. Recordkeeping, Notification and Reporting Requirements

This section replaces the previous requirements with the NESHAPS requirements in 40 CFR 63.787 and 40 CFR 63.788. This results in a change from daily to monthly recordkeeping. Although going from daily to monthly recordkeeping may sometimes constitute a relaxation, it is not in this case. As discussed previously, Indiana's rules were changed from allowing compliance to be determined on a daily average to requiring that each coating comply on an as-applied basis without averaging. Monthly recordkeeping does not interfere with enforceability of these emission limits because it is only necessary for the VOC content of the coatings to be identified without consideration of any averaging.

III. Rulemaking Action

EPA is approving, through direct final rulemaking, revisions to the VOC rules for the shipbuilding and ship repair industry. This rule applies to the coating operations carried out by the shipbuilding and ship repair industries in Clark, Floyd, Lake, and Porter counties of Indiana. This revision amends 326 IAC 8–12. EPA is approving: Increasing of the individual coating exemptions from 20 gallons per year to 25 gallons per year in 326 IAC 8–12–2; the decreasing of the amount of total allowable exempt coatings from 400 gallons per year to 264 gallons per year in 326 IAC 8–12–2; the changing of the wording of 326 IAC 8–12–4 by moving the words, ''from May 1 through September 30,'' from 8–12–4(a)(2) to 8–12–4(a)(2)(B); the replacing of portions of the VOC rules, sections 326 IAC 8–12–5 through 326 IAC 8–12–7, dealing with compliance requirements, test methods and procedures, recordkeeping requirements, notification requirements, and reporting requirements with the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements in sections 40 CFR 63.784 through 40 CFR 63.788.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 2, 2003, without further notice unless we receive relevant adverse written comment by May 1, 2003. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

IV. Statutory and Executive Order Reviews

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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P–Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(154) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c)* * *

(154) On August 08, 2001, Indiana submitted revised volatile organic Compound control requirements for certain facilities in the Indiana shipbuilding and ship repair industry. This submittal changes the individual and plantwide coating exemption levels and makes revisions to the compliance requirements, test methods and recordkeeping requirements. On October 1, 2002, Indiana submitted a letter providing its interpretation of certain of the above requirements.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compounds, Rule 12: Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties, Section 2: Exemptions, Section 4: Volatile organic compound emissions limiting requirements, Section 5: Compliance requirements, Section 6: Test methods and procedures, Section 7: Recordkeeping, notification, and reporting requirements. Adopted by the Indiana Air Pollution Control Board on February 7, 2001. Filed with the Secretary of State June 15, 2001, effective July 15, 2001.

(B) An October 1, 2002, letter from the Indiana Department of Environmental Management which provides background information on its shipbuilding and ship repair rule revisions and its interpretation of certain of these requirements.

[FR Doc. 03–7643 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Chapter I and Part 61

RIN 1660–AA25

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Managemnent Agency (FEMA), Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Final rule.

SUMMARY: We (the Mitigation Division of the Emergency Preparedness and Response Directorate of DHS) are changing the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for ''Pre-FIRM'' buildings in Special Flood Hazard Areas (SFHAs). (The term ''Pre-FIRM buildings'' means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later. Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.)

These increased flood insurance rates will be implemented in coordination with the elimination of the Expense Constant, a flat charge that the policyholder previously paid to defray certain expenses of the Federal Government related to flood insurance. As a result of this change, the same amount of premium revenue will still be collected to cover those expenses previously paid for by the Expense Constant; however, policyholders will pay for those expenses through premiums that vary by the amount of insurance that they purchase, instead of a flat charge per policy. The end result will be revenue neutral. In addition, we are revising the CFR chapter heading for our rules to reflect the Homeland Security Act.

EFFECTIVE DATE: May 1, 2003, except for the revision of the heading of 44 CFR chapter I, which is effective March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, DHS, Mitigation Division, 500 C Street SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, or (e-mail) *Thomas.Hayes@fema.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Comments

On February 3, 2003, we published at 68 FR 5264 a proposed rule to change the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for ''Pre-FIRM'' buildings in Special Flood Hazard Areas (SFHAs). (The term ''Pre-FIRM buildings'' means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later.)

During the comment period, we received three sets of comments. All were in support of this change. These comments came from the Association of State Floodplain Managers (ASFPM), the Florida Division of Emergency Management, and an insurance company that participates in the NFIP's Write Your Own program.

The following comment by the ASFPM is indicative of the other responses as well:

> We view this to be a positive effort by FIMA to encourage growth in the Program:
> • The change will be revenue neutral.
> • It will remove a perceived barrier to the sale of flood insurance—which may help the NFIP increase its policy base and increase revenue.

• By making the NFIP ''more like other insurance industry standards'' it may remove some resistance to write flood policies by insurance agents.

Comparison of May 1, 2003 Rate Increases With Current Rates

The following chart compares the current rates we charge for Pre-FIRM SFHA properties with the May 1, 2003 rates for Pre-FIRM, SFHA properties. Also these rates apply only to the rates charged for the ''first layer'' of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–448):

Type of structure	Current a zone [1] rates per year per $100 coverage on:		May 1, 2003 a zone [1] rates per year per $100 coverage on:			
			Structure			
			RCBAP [2]			
	Structure	Contents	High rise	Low rise	All other	Contents
1. Residential:						
No Basement or Enclosure	.68	.79	.85	.70	.76	.96
With Basement or Enclosure	.73	.79	.90	.75	.81	.96
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No Basement or Enclosure	.79	1.58	N/A	N/A	.83	1.62
With Basement or Enclosure	.84	1.58	N/A	N/A	.88	1.62

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Type of structure	Current a zone [1] rates per year per $100 coverage on:		May 1, 2003 a zone [1] rates per year per $100 coverage on:			
			Structure			
			RCBAP [2]			
	Structure	Contents	High rise	Low rise	All other	Contents
1. Residential:						
No Basement or Enclosure	.91	1.06	1.08	.93	.99	1.23
With Basement or Enclosure	.98	1.06	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No Basement or Enclosure	1.06	2.10	N/A	N/A	1.10	2.14
With Basement or Enclosure	1.12	2.10	N/A	N/A	1.16	2.14

[1] V zones are zones V1–V30, VE, and unnumbered V zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Prior to this change, as shown in the Current A Zone and Current V Zone table, RCBAP policyholders were always charged the same building rates as everyone else. In order to accomplish the elimination of the Expense Constant in a revenue-neutral manner, it is now necessary to vary the rates as shown in the accompanying tables.

National Environmental Policy Act (NEPA)

Pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4317 *et seq.*, we conducted an environmental assessment of this final rule. This assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment and Finding of No Significant Impact are on file for inspection through the Rules Docket Clerk, DHS, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the

Executive Order. The rule will be premium neutral for the National Flood Insurance Fund. The adjustment in premiums rates will be offset by the elimination of the Expense Constant. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule will adjust the premiums for buildings in Pre-FIRM Special Flood Hazard Areas. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

■ Accordingly, we amend 44 CFR chapter I as follows:

Chapter I—Federal Emergency Management Agency, Department of Homeland Security

■ 1. Revise the heading of 44 CFR chapter I to read as set forth above.

PART 61—INSURANCE COVERAGE AND RATES

■ 2. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

■ 3. Revise § 61.9 (a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for Pre-FIRM, A zone properties, Pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	A zone [1] rates per year per $100 coverage on:				V zone [2] rates per year per $100 coverage on:			
	structure			Contents	Structure			Contents
	RCBAP [3]		All other		RCBAP [3]		All other	
	High rise	Low rise			High rise	Low rise		
1. Residential:								
No Basement or Enclosure	.85	.70	.76	.96	1.08	.93	.99	1.23
With Basement or Enclosure	.90	.75	.81	.96	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:								
No Basement or Enclosure	N/A	N/A	.83	1.62	N/A	N/A	1.10	2.14
With Basement or Enclosure	N/A	N/A	.88	1.62	N/A	N/A	1.16	2.14

[1] 1 A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.
[3] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

* * * * *

Dated: March 26, 2003.

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness & Response.

[FR Doc. 03–7685 Filed 3–31–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order regarding the assessment and recovery of contributions to the federal universal service support mechanisms.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney or Diane Law Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Second Order on Reconsideration in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58, released on March 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we address petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order, 67 FR 79525, December 30, 2002, regarding the assessment and recovery of contributions to the federal universal service support mechanisms. We grant local exchange carriers' request for an interim waiver of § 54.712 of the Commission's rules to permit such carriers to continue to recover through the federal universal service line item certain contribution costs associated with Centrex customers on a per-line basis from multi-line business customers, pending action on petitions for reconsideration of this rule. In addition, we grant, in part, petitions filed by the United States Telecommunications Association (USTA) and SBC Communications Inc. (SBC) seeking reconsideration of § 54.712 to permit eligible telecommunications carriers (ETCs) to recover contribution costs associated with Lifeline customers' occasional interstate revenues through a universal service pass-through charge for such customers. We also address petitions filed by the National Exchange Carrier Association, Inc. (NECA), Verizon Wireless, and WorldCom, Inc. (WorldCom), and clarify how the Universal Service Administrative Corporation (USAC) shall conduct the universal service contribution true-up processes for revenues from 2002 and 2003. Finally, we grant, in part, a petition for reconsideration filed by AT&T Corp. (AT&T) requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent.

II. Discussion

1. *Centrex.* In this Order, we grant, in part, petitions for interim waiver filed by BellSouth, National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), SBC, and Verizon (Petitioners) of § 54.712(a) of our rules as it applies to the multi-line business customers of local exchange carriers, pending the Commission's resolution of petitions for reconsideration of the rule. We find Petitioners have demonstrated special circumstances to warrant deviation from our rule and that the public interest would be served by granting a limited interim waiver. Therefore, we waive § 54.712 on an interim basis to enable local exchange carriers to continue to recover federal universal service contribution costs through universal service line items using the equivalency ratios established for Centrex lines under our rules governing the Presubscribed Interexchange Carrier Charge (PICC). Until the Commission resolves pending petitions for reconsideration of § 54.712, local exchange carriers that utilize the PICC equivalency ratios when recovering contribution costs from Centrex customers will be permitted to recover a share of their contributions associated with the subscriber line charge for a specific Centrex line from their multi-line business customers in a given state.

3. Under §§ 69.131 and 69.158 of our rules, local exchange carriers have the option of recovering their contribution costs from Centrex customers through a universal service line item that uses the equivalency ratios established for Centrex lines under our rules governing the PICC. In the *Access Charge Reform Reconsideration Order,* the Commission adopted, for purposes of the PICC, a ratio of up to nine Centrex lines to one PBX trunk. The Commission subsequently granted local exchange carriers the option of applying this equivalency ratio to the recovery of universal service contribution costs from Centrex customers.

4. In the *Interim Contribution Methodology Order,* the Commission adopted a general prohibition on the recovery of amounts in excess of contribution obligations through federal universal line-item charges. As discussed, the Commission concluded such action would prevent carriers from recovering unrelated costs through universal service line items and from averaging contribution costs across all end-user customers. In addition, it would alleviate end-user confusion regarding universal service line items.

5. We conclude that special circumstances exist that warrant interim waiver of the rule. Petitioners have noted a potential inconsistency between §§ 54.712, 69.131, and 69.158. They assert that if carriers are not permitted to increase recovery charges for multi-line business customers, they may be unable to continue to apply an equivalency ratio to Centrex universal service pass-through charges as permitted by §§ 69.131 and 69.158 of our rules and still recover their contribution costs from their customers. They note the Commission did not indicate its intent in the *Interim Contribution Methodology Order* to overturn its existing policy of permitting local exchange carriers to apply an equivalency ratio to Centrex customer universal service pass-through charges. To the contrary, they argue that the Commission recognized that it may be appropriate to continue applying the one-ninth equivalency ratio to Centrex customer lines in the event that a connection-based universal service contribution methodology is adopted.

6. The petitions for reconsideration of this issue raise important issues we intend to resolve expeditiously. In the meanwhile, we believe the public interest would be served by granting a limited waiver of the general prohibition on averaging contribution

costs among different customers for contribution costs not recovered by operation of the Centrex equivalency ratios to preserve the status quo for a limited period of time. Grant of this interim waiver does not represent a substantive change in Commission policy. To the contrary, grant of this interim waiver is only provided to allow carriers to continue an existing Commission policy, while we examine that policy and contribution issues more broadly. Until the Commission addresses pending petitions for reconsideration of this issue, local exchange carriers will be permitted to continue to average such unrecovered contribution costs across multi-line business customers.

7. Moreover, this interim waiver will prevent an unintended increase in universal service pass-through charges on current Centrex users, pending the Commission's determination of the merits of the petitions for reconsideration on this and other related issues. Because most local exchange carriers currently apply the PICC equivalency ratios to Centrex universal service pass-through charges, the limited waiver we grant today will minimize changes in universal service line items for multi-line business customers in the immediate term, while carriers otherwise implement the new rule on April 1, 2003. In particular, we note that several organizations representing state agencies have submitted letters in support of this action. These commenters note that state governments rely heavily on Centrex service and would be disproportionately affected by increases in universal service line item charges resulting from denial of the interim waiver. We intend to weigh these and other arguments in reviewing the pending petitions for reconsideration.

8. We emphasize the limited nature of our action today. This waiver is limited to the narrow issue of how to accommodate existing Commission policies that the Commission did not directly address in the *Interim Contribution Methodology Order.* Except for this limited exception, all carriers (including local exchange carriers) will continue to be subject to broader limitations on the recovery of contribution costs through federal universal service line-item charges.

9. *Lifeline.* In addition, we grant, in part, petitions filed by SBC and USTA to reconsider § 54.712(b) of our rules, as it applies to the recovery of contributions associated with Lifeline customers. Specifically, we amend § 54.712(b) to permit ETCs to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission's universal service mechanisms. ETCs have always been free to recover such amounts from these customers in the past, and the Commission did not intend to preclude such recovery when it adopted the interim modifications in the *Interim Contribution Methodology Order.*

10. Sections 54.712(a) and (b) read together prohibit ETCs from recovering any contribution costs associated with Lifeline customers either from Lifeline customers directly or through a federal universal service line-item charge assessed on all other customers. When the Commission adopted § 54.712(b), it reasoned that because ''customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero.'' In particular, the Commission focused on the fact that Lifeline customers are not obligated to pay a subscriber line charge, which typically is a major source of interstate revenue for an ETC. Several large local exchange carriers, however, point out that customers of Lifeline services do in fact generate occasional interstate telecommunications revenues from interstate telecommunications services, such as one-time presubscribed interexchange carrier (PIC) change charges and other interstate intraLATA toll charges. These charges, however, are not associated with services subject to Lifeline discounts and, in any event, should not generate substantial contribution amounts. Therefore, we find that ETCs should not be prohibited from recovering these minimal contributions associated with these occasional interstate charges from Lifeline customers.

11. Moreover, this modification will ensure that ETCs are not disadvantaged by our recovery limitations if they provide both local and long distance services to customers who participate in the Lifeline program. The combination of §§ 54.712(a) and (b) could prohibit ETCs that provide both local and long distance services from recovering their contributions associated with such customer's long distance charges through any universal service line items. Interexchange carriers that only provide long distance services to customers who also qualify for Lifeline, however, have always been permitted to recover their contribution costs from these customers and still are free to do so under the current rules. We do not believe this disparity in recovery practices is competitively neutral. Accordingly, we will amend our rules to permit ETCs to recover contribution costs associated with interstate long distance charges from Lifeline customers.

12. *True-Up Process for 2002 and 2003.* In response to petitions for reconsideration filed by NECA, Verizon Wireless, and WorldCom, we clarify how USAC will true up annual revenue data filed by contributors on the FCC Form 499–A against quarterly revenue data filed on the FCC Form 499–Q. Specifically, we clarify that USAC shall only apply the annual true-up to revenue periods for which universal service contributions actually were assessed. The annual true-ups for calendar year 2002 and 2003 revenues, therefore, will not apply to revenues from the fourth quarter of 2002 and the first quarter 2003. As discussed, we deny other proposed modifications to USAC's true-up procedures or to the methodologies for calculating contributions to other support programs.

13. During the third quarter of each calendar year, USAC uses annual revenue data provided by contributors in the FCC Form 499–A to perform a true-up to quarterly revenue data submitted by contributors in FCC Form 499–Qs for the prior calendar year. As necessary, USAC refunds or collects from contributors any over-payments or under-payments. If the combined quarterly revenues reported by a contributor are greater than those reported on its annual revenue report (FCC Form 499–A), then a refund is provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499–A, USAC collects the difference from the contributor using an average of the two highest contribution factors for the year.

14. Because the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data, we agree with WorldCom and Verizon Wireless that USAC should only apply the true-up to revenue periods for which universal service contributions actually were assessed. If USAC applied the true-up to revenue periods for which universal service contributions were not assessed, certain providers' contribution obligation could potentially be increased or decreased. Consistent with this conclusion, we direct USAC not to apply the annual true-ups for calendar

years 2002 and 2003 to revenues from the fourth quarter 2002 and first quarter 2003.

15. The true-up for calendar year 2002 revenues will apply to revenues reported for the first three quarters of 2002, which were the basis for assessments in the third and fourth quarters of 2002 and the first quarter of 2003. The true-up for calendar year 2002 revenues will not apply to revenues reported for the fourth quarter of 2002. USAC will subtract revenues reported for the fourth quarter of 2002 from annual revenues reported on the FCC Form 499–A to arrive at an estimate of a contributor's actual revenues for the first three quarters of 2002. Consistent with USAC's current true-up procedures, USAC will then compare this amount to the sum of revenues reported for the first three quarters of 2002 to determine whether a refund or additional collection is warranted. Refunds will be based on the average of the two lowest contribution factors applied to revenues reported for the first three quarters of 2002. Additional collections will be based on the average of the two highest contribution factors applied to revenues reported for the first three quarters of 2002.

16. The true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for calendar year 2003 revenues will not apply to revenues projected for the first quarter of 2003. USAC will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499–A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003. USAC will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate. In subsequent years, the annual true-up will continue to apply to any and all revenue periods for which contributions are assessed.

17. We deny NECA's proposal to conduct additional true-ups on a quarterly basis. In addition to the annual true-up, NECA proposes a quarterly true-up mechanism in which a contributor's quarterly revenue projections would be compared to the corresponding quarter's actual revenue filed six months later. Under NECA's proposal, any difference between projections and actual revenues would be applied to the relevant contribution factor for that calendar quarter to arrive at a true-up amount. We disagree with NECA that quarterly true-ups are appropriate because it is more difficult for contributors to project revenues than report historical revenues. As the Commission noted in the Interim Contribution Methodology Order, although the modified contribution methodology relies on the ability of contributors to project gross-billed and collected revenues, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. In addition, contributors may correct their projections up to 45 days after the due date of each FCC Form 499–Q. We also note that by eliminating penalties for over-or under-reporting, NECA's quarterly true-up proposal would reduce incentives created under current true-up procedures for contributors to accurately forecast their revenues for the upcoming quarter. We therefore decline to adopt NECA's proposal at this time.

18. *Timing of Revised Safe Harbor for Mobile Wireless Providers.* We also reject Verizon Wireless's contention that the Commission retroactively changed reporting requirements for mobile wireless providers by requiring mobile wireless providers that choose to report their interstate telecommunications revenues based on an interim safe harbor to report an increased percentage of interstate revenues for the fourth quarter of 2002 and the first quarter of 2003. In the Interim Contribution Methodology Order, the Commission increased to 28.5 the interim safe harbor that provides cellular, broadband Personal Communications Service, and certain Specialized Mobile Radio providers with the option of assuming that a fixed percentage of their telecommunications revenues are interstate with the presumption of reasonableness. The Commission's decision to increase the mobile wireless safe harbor was based, in large part, on traffic studies conducted in the third quarter of 2002 by five unnamed large national mobile wireless providers. In the Interim Contribution Methodology Order, the Commission left unchanged mobile wireless providers' option of reporting actual interstate telecommunications revenues if they are able to do so.

19. Contrary to Verizon Wireless's contention, the rules adopted in the Interim Contribution Methodology Order do not impact revenues reported prior to January 29, 2003, the effective date of the order. The requirements adopted in the Interim Contribution Methodology Order only apply to future reporting obligations. For example, contributors to the federal universal service programs first reported revenues for the fourth quarter of 2002 and the first quarter of 2003 on the FCC Form 499–Q filed on February 3, 2003. Moreover, the increased interim safe harbor for mobile wireless providers will apply to universal service contributions beginning in the second quarter of 2003. These contributions will be based on projected revenues for the second quarter of 2003, which contributors reported on the February 3, 2003, FCC Form 499–Q.

20. The Commission also did not retroactively change revenue reporting requirements for other Commission programs, such as Local Number Portability, Numbering Administration, and Telecommunications Relay Service. The reporting of fourth quarter 2002 revenues for purposes of calculating assessment to other Commission programs will not occur until April 1, 2003. Contributions to these other programs are based on annual revenues reported on April 1st of each year. Assessments to these other programs based on calendar year 2002 revenues will not be billed until beginning in the third quarter of 2003. Likewise, reporting of revenues for the first quarter of 2003 for these other Commission programs will not occur until April 1, 2004, and will not be assessed until beginning in the third quarter of 2004. Therefore, we conclude that our decision to apply the revised interim wireless safe harbor to revenues reported for the fourth quarter of 2002 and the first quarter of 2003 does not constitute retroactive changes to reporting obligations or to contribution obligations.

21. *Rounding Up the Contribution Factor.* Finally, we grant, in part, a petition for reconsideration filed by AT&T requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent. Sprint and Verizon support AT&T's request. We direct the Wireline Competition Bureau (Bureau) to announce a contribution factor rounded up to the nearest tenth of a percent (*e.g.*, .073 or 7.3 percent). In order to allow an individual contributor the ability to recover the full amount of its contribution obligation through its federal universal line item, we also direct the Bureau to account for contribution factor rounding when calculating the circularity discount factor.

22. In the past, the Bureau has announced a contribution factor rounded to the nearest 1/10,000th of a percent (*e.g.*, .072805). AT&T has asserted that some of its billing systems can only accommodate a factor of three digits beyond the decimal point. Our decision today that the contribution

factor be rounded up to the nearest tenth of a percent, and that rounding be accounted for when calculating circularity, accommodates concerns expressed by AT&T and others that billing system limitations, when coupled with the recovery limitations in § 54.712 of our rules, may inhibit some carriers' ability to recover a portion of their contribution costs through their federal universal service line-item charges. This action also will prevent carriers from recovering amounts in excess of contribution obligations. We therefore conclude that each quarter the Bureau shall announce a contribution factor rounded up to the nearest tenth of a percent.

III. Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA), *see generally* 5 U.S.C. 601–612, requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Further Notice,* 67 FR 11254, March 13, 2002. The Commission sought written public comment on the proposals in the *First Further Notice,* including comment on the IRFA. In the *Interim Contribution Methodology Order,* the Commission included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA.

24. In the *Second Order on Reconsideration,* we eliminate § 54.712(b) of the Commission's rules, in order to permit eligible telecommunications carriers (ETCs) to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services, such as occasional interstate charges and interstate long distance charges, that are not supported by the Commission's universal service mechanisms. By eliminating this restriction on cost recovery, the *Second Order on Reconsideration* will have a beneficial, deregulatory impact on all ETCs with such customers, including small entity ETCs. We also note that this action will have no impact on the universal service contribution obligations of ETCs and should only minimally impact their contribution recovery practices. We therefore conclude that a FRFA is not required here because the *Second Order on Reconsideration* will have no significant economic impact on a substantial number of small entities.

IV. Ordering Clauses

25. Pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Second Order on Reconsideration *is adopted.*

26. Pursuant to sections 1, 4(i), 254 and 405 of the Communications Act of 1934, as amended, and §§ 1.3, 1.429 of the Commission's rules, that the Verizon Telephone Companies, SBC Communications Inc., and BellSouth Corporation Joint Petition for Interim Waiver and the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies Joint Petition for Interim Waiver are granted to the extent indicated herein.

27. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration filed by the United States Telecommunications Association and SBC Communications Inc. *are granted* to the extent indicated herein.

28. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the National Exchange Carrier Association, Inc. *is denied.*

29. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by WorldCom, Inc. *is granted.*

30. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the Verizon Wireless *is granted,* in part, and denied, in part, to the extent indicated herein.

31. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by AT&T Corp. *is granted* to the extent indicated herein.

32. Section 54.712 of the Commission's rules, is amended as set forth, effective April 1, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citation for part 54 continues to read as follows:

Authority :47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.712 [Amended]

■ 2. In § 54.712, remove and reserve paragraph (b).

[FR Doc. 03–7702 Filed 3–31–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[FTA Docket No. 98–B]

RIN 2132–AA30

Bus Testing

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is adopting, as a final rule, without change, the current interim final rule that sets forth regulations governing the testing of vehicles used in mass transportation service.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Marcel Belanger, Office of Research and Innovation, Federal Transit Administration, (202) 366–0725. For legal issues, contact Richard L. Wong, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) required FTA to establish a facility for the testing of buses, and prohibited the expenditure of FTA funds for any new bus model that had not first been tested at that facility.

FTA's initial Notice of Proposed Rulemaking (NPRM), published on May 25, 1989, was expansive, proposing that all new vehicles used in mass transportation service after September 30, 1989, (the effective date in STURAA) would be subject to testing. Due to numerous comments from the industry, FTA issued its first interim final rule on August 23, 1989, limiting testing to large buses, noting that the categories of vehicles subject to testing would be expanded over time. Subsequent interim final rules adding these remaining categories of vehicles were published on October 6, 1990, and July 28, 1992. Because of additional industry concerns, however, the effective dates in the July 28, 1992, interim final rule were further postponed, finally taking effect on February 10, 1993. FTA's fourth interim final rule, issued on November 3, 1993, set forth the final four subcategories of small vehicles subject to testing, and established guidelines for the partial testing of bus models that had been fully tested but later are produced with changes in configuration or components.

During the rulemaking process, FTA has had numerous meetings with bus manufacturing representatives that were widely publicized throughout the industry and interested persons were invited to attend the meetings and participate in the deliberations. Most recently, FTA and the Pennsylvania Transportation Institute (PTI) conducted a Bus Testing Program Workshop at PTI's facilities in State College, Pennsylvania, from January 28–29, 2002, in which all entities, both vehicle manufacturers and purchasers, were invited to express their views on the subject.

We note that at that workshop, as well as at Bus Rapid Transit (BRT) conferences in Los Angeles in April 2002 and at State College in June 2002, the issue of testing BRT vehicles was discussed. We believe that the current regulation, including the provisions which allow a waiver for demonstration vehicles and partial testing procedures, are adequate to address vehicles intended for use on BRT systems. FTA, however, is willing to entertain petitions for further rulemaking by interested parties.

Administratively, FTA has been pursuing non-regulatory efforts to reduce the testing burden on purchasers and manufacturers, such as implementing the partial testing procedures in the regulation to streamline test procedures and eliminate unnecessary and redundant tests. In addition, FTA is reviewing the possibility of progress payments, which would affect the funding eligibility of buses undergoing testing at PTI.

After consideration of all relevant material, including the discussions at the workshop and conferences, FTA has determined that accepting the existing regulation as FTA's final rule, without change, as published in the **Federal Register** (58 FR 58732 November 3, 1993) will effectuate the declared intent of STURAA.

Regulatory Analyses and Notices

FTA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as the economic affect of this rulemaking will not exceed $100 million or more, it will not adversely affect, in a material way, any sector of the economy, nor will it interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. However, it was listed as significant within the meaning of U.S. Department of Transportation's regulatory policies and procedures due to Congressional interest in the implementation of the program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities, as FTA now pays 80 percent of the testing fee (57 FR 8954, March 13, 1992), and allows the partial testing of certain vehicles (57 FR 33394, July 28, 1992). For these reasons, FTA believes that it has minimized the effects of this rule so that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule is consistent with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48), as it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This final rule reflects participation by state and local governments, and FTA believes it is the least costly and most effective way of implementing the statutory mandate.

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 Fairness Act of 1996, as it 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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA believes that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. OMB has approved the paperwork requirements of this rule (OMB No. 2132–0550), and this action will not impose any additional paperwork burden.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 665

Vehicle testing. Grant programs—transportation. Mass Transportation.

■ Accordingly, the interim rule amending 49 CFR part 665 which was published at 58 FR 58732, November 3, 1993, is adopted as a final without change.

Issued on: March 24, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–7549 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–17–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 000303059–3034–03; I.D. No. 021700B]

RIN No. 0648–XA49

Endangered and Threatened Species; Final Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*) in the United States

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

ACTION: Final rule; technical amendment

SUMMARY: NMFS published a proposed rule to list the U.S. population of smalltooth sawfish as endangered on April 16, 2001. After considering public comments on the proposed rule, NMFS is issuing a final rule to list the distinct population segment (DPS) of smalltooth sawfish in the United States as an endangered species. NMFS has determined that the U.S. DPS is in danger of extinction throughout its range.

NMFS is also making a technical amendment to the list of endangered marine and anadromous species to reinsert the listing of Atlantic salmon.

DATES: Effective May 1, 2003.

ADDRESSES: The complete administrative record for this regulation is available at NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702. The status review and proposed rule are also available electronically at the NMFS Web site at *http://www.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, at the address above,727–570–5312, or David O'Brien, NMFS, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS designated the smalltooth sawfish as a candidate species under the Endangered Species Act (ESA) on June 23, 1999 (64 FR 33467). On November 30, 1999, NMFS received a petition from the Center for Marine Conservation (now The Ocean Conservancy) requesting that NMFS list the North American populations of smalltooth sawfish and largetooth sawfish as endangered under the ESA. The petitioner's request was based on four criteria: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence. On March 10, 2000, NMFS published its determination that the petition presented substantial information indicating that listing may be warranted for smalltooth sawfish, but not for largetooth sawfish. Concurrently, NMFS announced the initiation of a smalltooth sawfish formal status review (65 FR 12959, March 10, 2000).

In order to conduct a comprehensive review of smalltooth sawfish, NMFS created a status review team to investigate the status of the species with regard to the listing criteria provided by the ESA. In addition to its own resources and data, the status review team gathered all known records and data of smalltooth sawfish by contacting fishery managers, museums and other research collectors. The status review contains the best scientific and commercial information available on smalltooth sawfish at the time of the report. The document addresses the status of the species, the five listing determination criteria, and the effect of efforts underway to protect the species.

The Smalltooth Sawfish Status Review was completed in December 2000 and has undergone peer review. The findings of the Status Review have been accepted by NMFS and some of the findings are summarized here. The Status Review contains a more complete discussion and complete literature citations for the information summarized in this final rule. The Status Review is available at on the NMFS Web site (see **ADDRESSES**).

NMFS published the proposed rule to list the smalltooth sawfish on April 16, 2001 (66 FR 19414). Comments received on the proposed rule are discussed below.

In addition to this final rule to list the U.S. population of smalltooth sawfish as endangered, NMFS is also making a technical amendment to the list of endangered species (50 CFR 224.101) to reinsert the listing for Atlantic salmon, which was inadvertently deleted from the list.

Summary of Comments Received on the Proposed Rule

During the 60–day public comment period, NMFS received a total of 12 written comments: four from private citizens, seven from non-governmental organizations, and one from a local non-profit research laboratory. All commenters supported the proposed rule. Three of the commenters also requested that critical habitat be designated for the smalltooth sawfish. Several commenters requested that NMFS develop a recovery plan or program for the species. One commenter also requested the listing of the largetooth sawfish. A brief summary of the comments received on the proposed rule is presented below, along with NMFS' response to each comment.

Comment 1: Three commenters stated that critical habitat designation is necessary for the smalltooth sawfish and urged NMFS to designate critical habitat.

Response: Section 4(a)(3)(A) of the ESA requires that critical habitat be designated concurrently with a determination that a species is endangered or threatened, to the maximum extent prudent and determinable. When such a designation is not determinable at the time of final listing of a species, section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation. NMFS has determined that designation of critical habitat for the sawfish is not determinable at this time.

NMFS has and continues to fund research that is necessary to identify the biological and physical habitat features that are essential to the conservation of the species. While more information is required before critical habitat can be designated, the available data suggest that shallow water, 1 meter or less, may be important nursery areas for the smalltooth sawfish; that river and creek mouths are important habitat elements; and that channels through shallow habitats may be important mating aggregation areas. During the next year NMFS will be gathering and reviewing the current and ongoing studies on the habitat use and requirements of

smalltooth sawfish. NMFS believes that this knowledge is extremely important for its determination relating to critical habitat.

Comment 2: Several commenters urged NMFS to initiate recovery efforts for the smalltooth sawfish and requested that NMFS develop a Recovery Program or Recovery Plan.

Response: Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA listed species, unless such a plan will not promote the conservation of the species. NMFS will convene a recovery team to develop a recovery plan for the smalltooth sawfish, after finalizing this rule and the critical habitat designation. NMFS recognizes that the U.S. DPS of smalltooth sawfish is at risk of extinction and that there is an urgent need to begin recovery efforts for this species as soon as possible. NMFS is committed to the recovery effort and intends to take the lead role in smalltooth sawfish recovery and research efforts even before a final recovery plan is developed. NMFS is currently funding studies to better define abundance, movements, and habitat requirements for smalltooth sawfish. NMFS believes that these research efforts are important in the development of the recovery plan and that they are important for the survival and recovery of the species. NMFS is also cooperating with state agencies and academia on their ongoing research and conservation efforts.

Comment 3: One commenter requested that NMFS also list the largetooth sawfish because of the similarity in appearance to the smalltooth sawfish.

Response: Section 4(e) of the ESA allows NMFS to treat any non-listed species as an endangered or threatened species if: (1) the species so resembles a listed species that enforcement personnel would have substantial difficulty differentiating the listed and non-listed species; (2) the effect of this substantial difficulty is an additional threat to the listed species; and (3) such a treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the ESA. NMFS does not believe that treating largetooth sawfish as endangered due to its similarity of appearance to smalltooth sawfish is warranted. NMFS recognizes that largetooth sawfish and smalltooth sawfish closely resemble each other, and that law enforcement personnel may have substantial difficulty differentiating the two species. However, historic records indicate that largetooth sawfish were rarely found in North America, and that all largetooth sawfish captured in U.S. waters were caught along the coast of Texas and Louisiana, outside of the known current range of smalltooth sawfish (see the sawfish 90–day finding, March 10, 2000; 65 FR 12959). Therefore, the possibility of confusing the two species in the U.S. is very small. It is unlikely that the similarity in appearance of the two species would pose an additional threat to smalltooth sawfish, or that treating largetooth sawfish as endangered would facilitate the enforcement of regulations to protect smalltooth sawfish.

Peer Review

NMFS solicited expert opinions on the status review documents in compliance with the July 1, 1994, Peer Review Policy (59 FR 34270). The responses received from the reviews support the proposed listing action.

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

Section 3(16) of the ESA, 16 U.S.C. 1532 (16), defines a species as ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' This definition allows for the listing of DPSs at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS published a joint policy to clarify the phrase ''distinct population segment (DPS)'' for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Discreteness of the U.S. Population of Smalltooth Sawfish

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

The status review team did not find any indication that the current U.S. population of smalltooth sawfish interacts with smalltooth sawfish elsewhere, suggesting that the U.S. population may be effectively isolated from other populations. However, there are few scientific data on the biology of smalltooth sawfish, and it is not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. The DPS policy provides for the delineation of a DPS based on international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. Although several southeastern U.S. states have regulations in place prohibiting fishing for this species, the smalltooth sawfish status review team was unable to identify any mechanisms regulating the exploitation of this species anywhere outside of the U.S. These differences are directly relevant to the inadequacy of existing regulatory mechanisms as a basis for considering the U.S. DPS as a species for purposes of the listing determination, particularly because the review team found no recent verifiable records of smalltooth sawfish populations outside of the U.S. Therefore, NMFS has determined that the U.S. population of smalltooth sawfish is discrete as defined under the DPS policy.

Significance of the U.S. Population of Smalltooth Sawfish

The DPS policy identifies several factors that may be considered in making a determination of a population's significance to the taxon to which it belongs. Among these considerations is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon. The smalltooth sawfish has already been wholly or nearly extirpated from large areas of its former range in the North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic by fishing and habitat modification, and its status elsewhere is uncertain but likely to be similarly reduced. In fact, the status review did not find any recent verifiable records of smalltooth sawfish populations outside the United States. Reports of this species from outside the Atlantic may be misidentifications of other pristids. Therefore, smalltooth sawfish populations in U.S. waters, while extremely depleted, may be the largest population of smalltooth sawfish in the Western Atlantic. The U.S. population of smalltooth sawfish

comprises an important component of the sawfishes' remaining global biological diversity, as sawfish in general are suffering worldwide declines. The U.S. population of smalltooth sawfish is also the northernmost population in the western hemisphere. Loss of the U.S. population of smalltooth sawfish would clearly result in a significant gap in the range of this species. For these reasons, the U.S. population of smalltooth sawfish is significant as defined under the DPS policy.

Based on the above analysis of the discreteness and significance of smalltooth sawfish, the population of smalltooth sawfish that occurs in waters of the eastern United States is both discrete and significant and constitutes a DPS. Therefore, consideration of the conservation status of the U.S. DPS of smalltooth sawfish in relationship to the ESA's listing standards is appropriate.

Distribution and Abundance

Smalltooth sawfish are tropical marine and estuarine fish that have the northwestern terminus of their Atlantic range in the waters of the eastern United States. In the United States, smalltooth sawfish are generally a shallow water fish of inshore bars, mangrove edges, and seagrass beds, but larger animals can be found in deeper coastal waters.

In order to assess both the historic and the current distribution and abundance of the smalltooth sawfish, the status review team collected and compiled literature accounts, museum collection specimens, and other records on the species. This information indicates that prior to around 1960, smalltooth sawfish occurred commonly in shallow waters of the Gulf of Mexico and eastern seaboard up to North Carolina, and more rarely as far north as New York. Subsequently their distribution has contracted to peninsular Florida and, within that area, they can only be found with any regularity off the extreme southern portion of the state. The current distribution is centered in the Everglades National Park, including Florida Bay.

Smalltooth sawfish have declined dramatically in U.S. waters over the last century, as indicated by publication and museum records, negative scientific survey results, anecdotal fisher observations, and limited landings per unit effort (from Louisiana). The ''Fisheries Statistics of the United States'' data sets from 1945–1978 report that smalltooth sawfish landings in Louisiana declined from a high of 34,900 lbs (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. The decline is likely greater than indicated by numbers or frequencies of catches because during the past century, both fishing and scientific sampling effort have increased by orders of magnitude. The fact that documented smalltooth sawfish catch records have declined during this period despite these tremendous increases in fishing effort underscores the population reduction in the species. While NMFS lacks time-series abundance data to quantify the extent of the DPS's decline, the best available information indicates that the abundance of the U.S. DPS of smalltooth sawfish is at an extremely low level relative to historic levels.

Summary of Factors Affecting the Species

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

NMFS has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species and conservation efforts that are underway in determining to promulgate this final rule. The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. NMFS has determined that the U.S. DPS of smalltooth sawfish is in danger of extinction throughout all or a significant portion of its range from a combination of four listing factors: The present threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural and manmade factors affecting the continued existence of the species. For these reasons, NMFS is listing the U.S. DPS of smalltooth sawfish as endangered. The listing factors and their application to the U.S. DPS of smalltooth sawfish are described below.

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

Loss and degradation of habitat has contributed to the decline of many marine species, and is judged to have impacted the distribution and abundance of smalltooth sawfish. The continued urbanization of the southeastern coastal states has resulted in substantial loss of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off. Animal wastes and fertilizers from agricultural runoff contribute large amounts of non-point source nutrient loading and introduce a wide range of toxic chemicals into habitats important to smalltooth sawfish. The rate of urban development in the southeast coastal zone is more than four times the national average, destroying or degrading significant amounts of coastal and estuarine habitat. Commercial activities in the southeast eliminate or degrade substantial amounts of marine and estuarine fish habitat, although the exact amount is unknown. An analysis of 18 major southeastern estuaries recorded over 703 miles (1,131 km) of navigation channels and 9,844 miles (15,842 km) of shoreline modifications. Profound impacts to hydrological regimes have been produced in South Florida through the construction of a 1,400–mile (2,253–km) network of canals, levees, locks, and other water control structures that modulate freshwater flow from Lake Okeechobee, the Everglades, and other coastal areas.

Potential detrimental impacts from the activities listed above on habitat of the U.S. DPS of smalltooth sawfish include: (1) loss of wetlands, (2) eutrophication, (3) point and non-point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Smalltooth sawfish may be especially vulnerable to coastal habitat degradation due to their affinity for shallow, estuarine systems. The cumulative impacts from habitat degradation discussed above may reduce habitat quality and limit habitat quantity available to the species. Given current low levels of abundance, and its current retracted range, efforts need to be undertaken to better understand, avoid, minimize and mitigate these factors.

(b) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Smalltooth sawfish have historically been caught as bycatch in various fishing gears throughout their historic range, including gillnet, otter trawl, trammel net, seine, and, to a lesser degree, hand line. There are frequent accounts in early literature of smalltooth sawfish being entangled in fishing nets from areas where smalltooth sawfish were once common, but are now rare or extirpated (Evermann and Bean, 1898). Their long, toothed rostrum makes it difficult to avoid entanglement in virtually any kind of large mesh gillnet gear. The saw penetrates easily through nets and causes the animal to become entangled when it attempts to escape. Shrimp trawling is another source of incidental mortality on smalltooth sawfish. Entangled specimens frequently have to be cut free, causing extensive damage to nets and presenting a substantial hazard if brought on board. For these reasons, most smalltooth sawfish caught by fishermen are either killed outright or released only after removal of their saws.

Large-scale directed fisheries for smalltooth sawfish have not existed; however, smalltooth sawfish bycatch has been commercially landed in various regions, primarily in Louisiana. Total Gulf of Mexico landings dropped continually from 1950 to 1978, ranging from a high of 9.3 metric tons to less than 0.1 metric tons during this time period. NMFS does not have any records of landings since 1978 (NMFS Fisheries Statistics and Economic Division's Database, commercial landings data).

A data set from ''Fisheries Statistics of the United States'' (1945–1978) of smalltooth sawfish landings in Louisiana by shrimp trawlers, containing both landings data and crude information on effort (number of vessels, vessel tonnage, number of gear units), underscores that landings have dramatically declined, even as fishing effort increased. Annual smalltooth landings in Louisiana declined from a high of 34,900 lbs (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. During this period of time, the number of fishing vessels, the size of the fishing vessels, and the amount of gear that they deployed increased substantially. Landings per unit effort (LPUE) was calculated using three different units of effort (number of vessels, tonnage of vessels, and number of gear units). All three data series showed dramatic declines in LPUE, from high levels in the 1950s to very low levels in the 1970s. The magnitude of these declines is such that the LPUE values in the 1970s are less than one percent of those in the 1950s, indicating a severe decline in the population. The lack of landings since 1978 shows that smalltooth sawfish have been commercially unavailable for over 20 years.

Anecdotal information collected by NMFS port agents indicates that smalltooth sawfish are now taken very rarely in the shrimp trawl fishery. The most recent records from Texas are from the 1980s. Through 1999, smalltooth sawfish were still occasionally documented in shrimp trawls in Florida (4 from 1990 to 1999). Mote Marine Laboratory records documented a smalltooth sawfish taken in a shrimp trawler and one caught on a long-line off the coast of Florida, in 2002.(Simpfendorfer, pers. comm., 2002).

In historical recreational fisheries records, smalltooth sawfish have occasionally occurred as bycatch. Occasional takes with harpoon or hook-and-line by recreational fishers in Florida were recorded during the first half of the twentieth century. In Texas, many sawfish were reportedly taken incidentally by sport fishermen in the bays and surf prior to the 1960s. Most of these fish were released. However, prior to their live release the saws of many individuals were removed. This practice may have contributed to the decline of smalltooth sawfish in Texas.

Today, recreational catches of sawfish are very rare, and poorly documented for the most part, except within the Everglades National Park. Long-term abundance data are not available, but there are recent (1989–1999) recreational catch per unit effort (CPUE) data for the Everglades. These CPUE data indicate that a sustaining population still exists there, with consistent annual catches by private recreational anglers and guide boats. Direct take of smalltooth sawfish has been of little importance or remains obscure. Although there is a market for smalltooth sawfish saws, the species is not commonly taken and any captures are apparently incidental. Smalltooth sawfish have also been taken by collectors and sold live to aquaria. The recent high prices aquaria are willing to pay for this species ($1,000 per ft; $3,200 per m) may be providing increased incentive for their collection. The smalltooth sawfish has rarely been taken for scientific purposes.

(c) Disease or Predation

There is no information regarding predation or disease affecting smalltooth sawfish. The decline of the species appears to have been one of slow attrition over the course of the twentieth century, primarily from bycatch in fisheries and secondarily by coastal habitat destruction rather than from some acute epizootic event. The few living specimens examined (Colin Simpfendorfer, Mote Marine Laboratory and Jose Castro, NMFS, pers. comm., 2000) appear to be in good health.

(d) Inadequacy of Existing Regulatory Mechanisms

Numerous Federal, state, and inter-jurisdictional laws, regulations and policies govern activities in U.S. waters that have the potential to affect the abundance and survival of smalltooth sawfish and their habitat. While these laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. For example, NMFS and FWS consult with other agencies on projects that may impact fish and wildlife and provide recommendations to avoid any adverse impacts, but there has never been a recommendation directed at the protection of sawfish. Any general recommendations that are implemented and reduce habitat loss in shallow coastal areas may provide some benefit to smalltooth sawfish by curbing increased habitat degradation.

There are no Federal regulations for the protection of sawfish. With the exception of Florida and Louisiana, smalltooth sawfish can also still be legally harvested in state waters.

As noted above, a century of net fisheries combined with the low reproductive potential of the sawfish (typical of most elasmobranchs) has resulted in a very severe decline in sawfish populations. Smalltooth sawfish bycatch in gillnets has likely been reduced due to recent regulations prohibiting or limiting the use of gillnets in some state waters, but bycatch in other gears such as trawls may still present a threat to this species. Recent reports of smalltooth sawfish caught with their saws already removed indicate that smalltooth sawfish are still being harmed by commercial or recreational fishing activities. Based on this information, NMFS believes that existing Federal and state laws, regulations, and policies are inadequate to protect smalltooth sawfish.

(e) Other Natural or Manmade Factors Affecting its Continued Existence

Current and future abundance of smalltooth sawfish is limited by its life history characteristics. While little is

known directly about smalltooth sawfish life history, inferences can be drawn from closely related species for which more information is available, such as the largetooth sawfish and other elasmobranchs. These species have slow growth, late maturity, a long life span, and low fecundity, and it is highly likely that smalltooth sawfish share these characteristics. These combined characteristics result in a very low intrinsic rate of population increase and are associated with the life history strategy known as ''k-selection.'' K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Conversely, they are not able to respond effectively (rapidly) to additional sources of mortality, such as overexploitation and habitat degradation. Smalltooth sawfish have been and are currently subjected to both overexploitation and habitat degradation.

The intrinsic rate of population growth can be a useful parameter to estimate the capacity of a species to withstand exploitation. Animals with low intrinsic rates of increase are particularly vulnerable to excessive mortalities and rapid stock collapse, after which recovery may take decades. The estimated intrinsic rate of natural increase for smalltooth sawfish ranges from 0.08 per year to 0.13 per year, and population doubling times range from 5.4 years to 8.5 years (Simpfendorfer, 2000a). The American Fisheries Society considers smalltooth sawfish in North America to be at a high risk of extinction (Musick et al., 2000).

Listing Determination

The U.S. DPS of smalltooth sawfish is at a critically low level of abundance based on the status review team's review of literature accounts, museum collection specimens, and other records of the species. The U.S. DPS of smalltooth sawfish continues to face threats from: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, (5) hydrologic modifications, and (6) incidental catch in fisheries. Commercial bycatch has played the primary role in the decline of this DPS. Quantitative data are limited, but indicate that smalltooth sawfish have been taken by commercial fishermen and that this species has experienced severe declines in its abundance. While Federal, state, and interjurisdictional laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. Based on the species' low intrinsic rate of increase resulting from their slow growth, late maturation, and low fecundity, population recovery potential for the species is limited and the species is at risk of extinction. Therefore, under current circumstances, the U.S. DPS of smalltooth sawfish is in danger of extinction.

Current protective measures and conservation efforts underway to protect the U.S. DPS of smalltooth sawfish are confined to: actions directed at increasing general awareness of this species and the risks it faces; possession prohibitions in the state waters of Florida and Louisiana; and research being pursued by the Mote Marine Laboratory's Center for Shark Research. There are no Federal or state conservation plans for the smalltooth sawfish.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include development and implementation of recovery plans, requirements that Federal agencies use their authorities to conserve the species, and prohibitions against certain practices, such as taking individuals of the species. Recognition through listing encourages and results in conservation actions taken by Federal agencies, state agencies, private organizations, groups, and individuals. The ESA also provides for possible land acquisition and cooperation with the states. The conservation measures required of Federal agencies and the prohibitions against taking and harm are discussed, in part, here.

The ESA and its implementing regulations set forth a series of general prohibitions that apply to all endangered wildlife. The prohibitions of section 9 of the ESA, in part, make it illegal for any person subject to the jurisdiction of the United States to take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct), to import into, or export from, the United States, to ship in interstate or foreign commerce in the course of commercial activity, or to sell or offer for sale in interstate or foreign commerce any endangered wildlife. To possess, sell, deliver, carry, transport, or ship endangered wildlife that has been taken illegally is also prohibited.

Section 7 of the ESA imposes special duties on Federal agencies for the protection and conservation of endangered and threatened species. Section 7(a)(1) requires Federal agencies to use their authorities to conserve listed species and their habitats by carrying out conservation programs for endangered and threatened species. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the NMFS or the FWS. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402.

ESA sections 10(a)(1)(A) and 10(a)(1)(B) provide NMFS with authority to grant exceptions to the section 9 takings prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a take of listed species. NMFS has issued section 10(a)(1)(A) research and enhancement permits for other listed species for these purposes. ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include agricultural or development activities that affect sawfish habitat and the management of state fisheries that may interact with sawfish.

The ESA also provides some exceptions to the prohibitions, without permits, for certain antique articles and species held in captivity at the time of listing. ESA section 10(h) allows antique articles of listed species to be excluded from essentially all the ESA prohibitions as long as they are at least 100 years old and meet certain other specified conditions. Section 9(b)(1) provides a narrow exemption for animals held in captivity at the time of listing: those animals are not subject to the import/export prohibition or to protective regulations adopted by the Secretary, so long as the holding of the species in captivity, before and after listing, is not in the course of a commercial activity; however, 180 days after listing there is a rebuttable presumption that the exemption does not apply. Thus, in order to apply this exemption, the burden of proof for confirming the status of animals held in captivity prior to listing lies with the holder. The section 9(b)(1) exemption for captive wildlife would not apply to any progeny of the captive animals that may be produced post-listing.

Take Guidance

On July 1, 1994, NMFS and FWS published a series of policies regarding listing under the ESA, including a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of ESA listings on proposed and ongoing activities within the species' range. Although not binding, NMFS has identified specific activities that would likely not be considered a violation of section 9, as well as activities that would likely be considered a violation. Activities that NMFS believes would result in violation of section 9 prohibitions with respect to the U.S. DPS of smalltooth sawfish include, but are not limited to, the following:

(1) Taking or attempting to take smalltooth sawfish, including as by-catch in commercial and recreational fisheries;

(2) Possessing, delivering, transporting or shipping any smalltooth sawfish or smalltooth sawfish part that was illegally taken;

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any smalltooth sawfish or smalltooth sawfish part, in the course of a commercial activity, even if the original taking of the smalltooth sawfish was legal;

(4) Selling or offering for sale in interstate or foreign commerce any smalltooth sawfish or smalltooth sawfish part, except antique articles at least 100 years old;

(5) Importing or exporting smalltooth sawfish or any smalltooth sawfish part to or from the United States;

(6) Degradation or modification of the smalltooth sawfish's coastal habitat through, for example, such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, and diversions of freshwater run-off to the extent that such habitat modification would result in death or injury to smalltooth sawfish by significantly impairing essential behavioral patterns including breeding, rearing, migrating, feeding, or sheltering;

(7) Collecting or handling wild smalltooth sawfish, even for scientific or conservation purposes, without the required permits;

(8) Releasing a captive smalltooth sawfish into the wild. Although smalltooth sawfish held non-commercially in captivity at the time of listing are exempt from certain prohibitions, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly the prohibition against injuring or killing. Release of a captive animal has the potential to injure or kill the animal if the release is not properly planned and the animal is not properly acclimated. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations of sawfish through introduction of diseases or inappropriate genetic mixing. Depending upon the circumstances of the case, NMFS may authorize the release of a captive animal through a section 10(a)(1)(A) permit for enhancement of survival; and

(9) Harming captive smalltooth sawfish by, among other things, injuring or killing a captive smalltooth sawfish, through, for example, provision of experimental or potentially injurious veterinary care or conducting research or breeding activities on captive smalltooth sawfish, outside the bounds of normal animal husbandry practices. Specifically, NMFS has not found any records of successful captive breeding of smalltooth sawfish and, therefore, believes that captive breeding is inherently experimental and potentially injurious. Furthermore, the production of smalltooth sawfish progeny has conservation implications (both positive and negative) for wild populations of smalltooth sawfish. Experimental or potentially injurious veterinary procedures and research or breeding activities on smalltooth sawfish may, depending upon the circumstances, be authorized by NMFS through an ESA section 10(a)(1)(A) permit for scientific research or the enhancement of the propagation or survival of the species.

Although not binding, NMFS believes that the following actions, depending on the circumstances, would not result in a violation of section 9 prohibitions with respect to the U.S. DPS of smalltooth sawfish:

(1) Take of smalltooth sawfish authorized by, and carried out in accordance with, the terms and conditions of an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;

(2) Incidental take of smalltooth sawfish resulting from Federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed, and when the otherwise lawful activity is conducted in accordance with any terms and conditions granted by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Incidental take of smalltooth sawfish resulting from otherwise lawful, non-Federal activities for which an ESA section 10(a)(1)(B) permit has been issued. Permittees may be individuals, groups (e.g., an agricultural cooperative whose farming activities affect habitat), or local or state governments (e.g., a state marine fisheries agency seeking incidental take authorization for fisheries managed by the state);

(4) Continued possession of smalltooth sawfish parts that were in possession at the time of this listing. Such parts may be non-commercially exported or imported; however, the importer or exporter must be able to provide sufficient evidence to show that the parts meet the criteria of an ESA section 9(b)(1) (i.e. held in a controlled environment at the time of listing, non-commercial activity).

(5) Continued possession of live smalltooth sawfish that were in captivity or in a controlled environment (e.g. in aquaria) at the time of this listing, so long as the prohibitions under an ESA section 9(a)(1) are not violated. Again, facilities should be able to provide evidence that the smalltooth sawfish were in captivity or in a controlled environment prior to listing. NMFS suggests that such facilities submit information to NMFS on smalltooth sawfish in their possession (e.g., size, age, and description of animals, and the source and date of acquisition) to establish their claim of possession (see **FOR FURTHER INFORMATION CONTACT**); and

(6) Provision of care for live smalltooth sawfish that were in captivity at the time of this listing. As stated previously, animals held in captivity at the time of listing are still protected under the ESA and may not be killed or injured, or otherwise harmed, and, therefore, must receive proper care. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and NMFS does not consider such activities to constitute take or harassment of the animals so long as adequate care, including adequate veterinary care is provided. Such veterinary care includes confining, tranquilizing, or anesthetizing smalltooth sawfish when such practices, procedures, or provisions are not likely to result in injury.

Section 11(f) of the ESA gives NMFS authority to promulgate regulations that may be appropriate to enforce the ESA. Future regulations may be promulgated to regulate trade or holding of smalltooth sawfish, if necessary. The

public will be given the opportunity to comment on future proposed regulations.

Critical Habitat

''Critical habitat'' is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical 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 as the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat be designated, concurrently, with the listing of a species. Section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation if such designation is not determinable at the time of final listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat.

NMFS has determined that designation of critical habitat is not determinable at this time. NMFS will complete ongoing research and gather and review other ongoing studies on the habitat use and requirements of smalltooth sawfish to attempt to identify smalltooth sawfish nursery and breeding areas. Once these and other habitat areas are identified and mapped, NMFS will publish, in a separate rule, a proposed designation of critical habitat for the U.S. DPS of smalltooth sawfish, to the maximum extent prudent and determinable.

References Cited

Evermann, B.W. and B. A. Bean. 1897(1898). Indian River and its fishers. U. S. Comm. Fish.,Rep. Comm 22:227–248.

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Simpfendorfer, C.A. 2000(a). Predicting population recovery rates for endangered western Atlantic sawfishes using demographic analysis. Environmental Biology of Fishes 58: 371–377.

Classification

Regulatory Flexibility Act and Executive Order 12866

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, listing actions are not subject to review under Executive Order 12866.

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir.1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (See also NOAA Administrative Order 216–6.)

Executive Order 13132, Federalism

Smalltooth sawfish records and data were collected by the status review team from appropriate state fishery managers and incorporated into the Status Review. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS intends to engage in formal and informal contacts with states, other affected local and regional entities, and those engaged in ongoing conservation and recovery efforts for the smalltooth sawfish.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation

Dated: March 25, 2003.

Rebecca Lent,

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

■ For reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority for part 224 continues to read as follows:

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

■ 2. In § 224.101, paragraph (a) is revised by inserting the following text after ''Shortnose sturgeon (*Acipenser brevirostrum*)'' and before ''Totoaba (*Cynoscian macdonaldi*)'': ''Smalltooth sawfish (*Pristis pectinata*) in the United States; Atlantic salmon (*Salmo salar*) Gulf of Maine population, including naturally reproducing populations and those river-specific hatchery populations cultured from them;''.

[FR Doc. 03–7786 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Doc. No. 030324070–3070–01, I.D. 030703C]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification of aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2003, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective April 1, 2003.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Yates, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5–year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 2002 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2003 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2003 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 25, 2003.

Rebecca Lent,

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

[FR Doc. 03–7785 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes, and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320, –500 series airplanes, and Model ATR72 series airplanes. This proposal would require replacement of a certain Automatic Takeoff Power Control System (ATPCS) test selector switch with a different test selector switch. This action is necessary to prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–280–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–280–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes, and Model ATR72 series airplanes. The DGAC advises that it has received several reports of dual engine power drop during ground maneuvers, with associated loss of both alternating current wild (ACW) and main hydraulic power. Investigation revealed abnormal wear of contact surfaces within the IPP JANCO ATPCS (Automatic Takeoff Power Control System) test selector switch. The abnormal wear is suspected to have caused contact shorting. (Each time the ATPCS test selector switch was replaced, the malfunction cleared.) Due to the different governing modes applicable during these operating phases, the malfunction can only occur during taxiing or landing, not during takeoff or in flight. Shorting of the contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, if not corrected, could result in dual engine power drop with associated loss of both ACW and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload.

Explanation of Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Letters

ATR42–61–5012 (for Model ATR42 series airplanes) and ATR72–61–6008 (for Model ATR72 series airplanes), both dated April 23, 2002, which describe procedures for replacing the IPP JANCO ATPCS test selector switch on panel 114VU (FIN 22KF) with an IEC Electronique test selector switch. Accomplishment of the actions specified in the applicable service letter is intended to adequately address the identified unsafe condition. The DGAC classified these actions as mandatory and issued French airworthiness directives 2001–214–084(B) and 2001–215–057(B), both dated May 30, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service letter described previously.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $536 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $103,208, or $776 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 2001–NM–280–AD.

Applicability: Model ATR42–200, –300, –320, –500 series airplanes, and Model ATR72 series airplanes; certificated in any category; equipped with IPP JANCO Automatic Takeoff Power Control System (ATPCS) test selector switch, part number (P/N) ACE 0002; except those airplanes having received modification 5162 in production and on which no replacement of the ATPCS test selector switch has been performed afterwards.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload, accomplish the following:

Replacement

(a) Within 5 years after the effective date of this AD, replace the IPP JANCO Automatic Takeoff Power Control System (ATPCS) test selector switch having P/N ACE 0002 on panel 114VU (FIN 22KF) with an IEC Electronique test selector switch having P/N 097–037–00, per Avions de Transport Regional Service Letters ATR42–61–5012 (for Model ATR42 series airplanes) or ATR72–61–6008 (for Model ATR72 series airplanes), both dated April 23, 2002; as applicable.

Parts Installation

(b) As of the effective date of this AD, no person shall install an IPP JANCO ATPCS test selector switch, P/N ACE 0002, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–214–084(B) and 2001–215–057(B), both dated May 30, 2001.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7749 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–33–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes. This proposal would require revising the airplane flight manual to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before descent. This action is necessary to prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–33–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–33–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes. The DAC advises that several events involving pitch trim upsets have occurred on these airplanes during the autopilot coupled descent phase of flight. The pitch trim upsets have been attributed to jammed or frozen pitch trim actuators. As the airplane ascends through visible moisture, the pitch trim actuators can freeze in a position trimmed for cruise flight. During a coupled descent, the autopilot will attempt to retrim the airplane, and, if the actuators are frozen, the control cables in the pitch trim system can become stretched. If the autopilot is subsequently disengaged for any reason, the spring-back effect caused by the sudden release of the tension in the stretched cables could result in a pitch upset. This condition, if not corrected, could result in reduced controllability of the airplane.

Airplane Flight Manual (AFM) Revisions

The DAC advises that the flight crew must check the pitch trim before any descent. The check will alert the crew to a possible frozen or jammed actuator and enable the crew to take appropriate action to prevent a pitch upset. The check procedures are described in certain AFM revisions, which the DAC has mandated.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 120–25–0262, dated October 15, 2001; and Change 01, dated September 3, 2002. The service bulletins describe procedures for installing two placards that advise the flight crew to check the pitch trim before descent. The DAC classified these service bulletins as mandatory and issued Brazilian

airworthiness directive 2001–06–01R1, dated November 28, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the AFM to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before any descent.

Differences Between Proposed AD and Brazilian Airworthiness Directive

The Brazilian airworthiness directive mandates a 20-flight-hour compliance time to ''add a copy of [the] AD to the AFM'' to enforce certain procedures, and a 400-flight-hour compliance time to ''incorporate the applicable AFM revision'' for revised procedures. This proposed AD would require that the AFM be revised within 100 flight hours. An AD that requires an AFM revision sets forth a single compliance time that applies to the incorporation of the revised language into the AFM as well as adherence to the revised procedures. The FAA has determined that a 100-flight-hour compliance time is an appropriate interval that will maintain an adequate level of safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 233 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2003–NM–33–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane, accomplish the following:

Revision of Airplane Flight Manual (AFM): AFM–120/794

(a) Within 100 flight hours after the effective date of this AD, revise the FAA-approved AFM, EMBRAER AFM–120/794, as specified in paragraphs (a)(1) and (a)(2) of this AD. These actions may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise the Flight Controls Failures paragraph of the Abnormal Procedures section by replacing the existing Elevator Trim Jamming procedure with the following:

''Elevator Trim Jamming:

Control Wheel	Hold Firmly
Autopilot	Disengage
Airspeed	Reduce

Note: Minimum airspeed with flap 0°—160 KIAS

Pitch trim command ..... Check all switches and elevator trim wheel

If pitch trim is recovered: Re-trim the airplane and continue the flight with the autopilot disengaged, not exceeding the airspeed when the trim was recovered.

If pitch trim is not recovered: Land at the nearest suitable airport.

Approach and landing configuration:

Landing gear ..... Down

Flaps 25

Airspeed Vref25

Caution: Do Not Try to Re-Engage the Autopilot.''

(2) Revise the Normal Procedures section of the AFM, after the current checklist item for activating the FASTEN BELTS switch, by inserting the following:

''Pitch Trim System Check:

Control Wheel ..... Hold firmly

Autopilot ..... Disengage

Power Levers ..... As required

Elevator Trim Wheels ..... As required

Caution: Manually Set the Elevator Trim Wheels To the Required Descent Attitude.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

Elevator Trim Jamming Procedure ..... Perform

Caution: Do Not Try To Re-Engage the Autopilot.

If no abnormal trim operation is observed:

Flight Director Vertical Mode ..... As required

Autopilot ..... Reengage''

AFM Revision: Collins APS–65B Autopilot AFM Supplement

(b) Concurrently with the AFM revisions required by paragraph (a) of this AD, revise the Limitations section of the Collins APS–65B Autopilot System Supplement to include the following (this may be accomplished by inserting a copy of this AD into the AFM Supplement):

''(1) The autopilot must not be used during descent unless a trim check has been performed successfully prior to descent, as follows:

Pitch Trim System Check:

Control Wheel ..... Hold firmly

Autopilot ..... Disengage

Power Levers ..... As required

Elevator Trim Wheels ..... As required

Caution: Manually Set the Elevator Trim Wheels to the Required Descent Attitude.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

Elevator Trim Jamming Procedure ..... Perform

Caution: Do Not Try To Re-Engage the Autopilot.

If no abnormal trim operation is observed:

Flight Director Vertical Mode ..... As required

Autopilot ..... Reengage

(2) If an elevator trim jamming is detected during flight and the pitch trim system resumes normal operation on ground, only a ferry flight using a special permit may be performed to return the aircraft to a maintenance base for replacement of the actuators. In this case, the use of autopilot is prohibited.''

Placard Installation

(c) Within 300 flight hours after the effective date of this AD, install two placards on the glareshield, advising the flight crew to check the pitch trim before any descent, in accordance with EMBRAER Service Bulletin 120–25–0262, dated October 15, 2001; or Change 01, dated September 3, 2002.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance and/or Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–01R1, dated November 28, 2001.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7750 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–61–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 365 N3 and EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS 365 N3 and EC 155B helicopters that would have revised the Airworthiness Limitations section of the maintenance manuals by establishing a new service life limit for the Fenestron pitch change control rod (control rod). That proposal was prompted by a failure of a control rod on a prototype helicopter that led to a precautionary landing. This action revises the proposed rule by requiring replacement of the control rod with an improved reinforced steel airworthy control rod. The actions specified by this proposed AD are intended to prevent failure of the control rod, loss of control of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–61–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend 14 CFR part 39 to add an AD for Eurocopter Model AS 365 N3 and EC 155B helicopters was published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 2, 2002 (67 FR 61843). That NPRM proposed to reduce the current service life limit of 1,500 hours time in service (TIS) to 300 hours TIS for the control rod, part number (P/N) 365A33–6161–21, and proposed to require removing the control rod:

- Before further flight for helicopters with control rods having 700 or more hours TIS;
- Within 20 hours TIS for helicopters with control rods having 500 or more hours TIS, but less than 700 hours TIS; and
- Within 30 hours TIS for helicopters with control rods having more than 270 hours TIS and less than 500 hours TIS.

The proposed AD would also have required revising the Airworthiness Limitations section of the maintenance manuals to reflect the new retirement life of 300 hours TIS for the control rod. That NPRM was prompted by a failure of a control rod on a prototype helicopter that led to a precautionary landing. That condition, if not corrected, could result in loss of control of the tail rotor and subsequent loss of control of the helicopter.

Since issuing that NPRM, the manufacturer has made available a newly designed, reinforced steel control rod. Therefore, based upon the adoption of the improved-design control rod by the airworthiness authority of the country in which the product was manufactured, we are proposing to adopt a one-time replacement of the control rod rather than our original proposal to replace the control rod initially and thereafter at 300 hours TIS intervals. In addition, we have made other changes to the proposal.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The Direction Générale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 365 N and Model EC 155B helicopters. The DGAC advises that a control rod failure occurred on a prototype aircraft and mandates removing control rod, P/N 365A33–6161–21, at certain times depending on the number of helicopter flight hours, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20.

Eurocopter has issued Alert Telex No. 04A005 for Model EC 155B helicopters, and Alert Telex No. 01.00.55 for Model AS 365 N3 helicopters, both dated July 4, 2002. The alert telexes specify removing the control rod, P/N 365A33–6161–21, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–472–057(A) for Model AS 365 N3 helicopters, and AD No. 2002–473–006(A) for Model EC 155B helicopters. Both AD's are dated September 18, 2002, and were issued to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

An unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed

AD would require removing the control rod, P/N 365A33–6161–21, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to remove and replace the control rod, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,677. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,391.

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. 2001–SW–61–AD.

Applicability: Model AS 365 N3 helicopters with MOD 0764B39 (Quiet Fenestron) and Model EC 155B helicopters with tail rotor pitch change control rod (control rod), part number (P/N) 365A33–6161–21, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the control rod, loss of control of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the control rod, P/N 365A33–6161–21, and replace it with a reinforced steel control rod, P/N 365A33–6214–20, in accordance with the following table:

Remove the control rod:	For control rods with:
Before further flight	700 or more hours TIS.
Within 20 hours TIS	500 or more hours TIS but less than 700 hours TIS.
Within 30 hours TIS	More than 270 hours TIS and less than 500 hours TIS.

Note 2: Eurocopter Alert Telex No. 04A005, for Model EC 155B helicopters, and Alert Telex No. 01.00.55, for Model AS 365 N3 helicopters, both dated July 4, 2002, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–472–057(A) for Model AS 365 N3 helicopters, and AD No. 2002–473–006(A) for Model EC 155B helicopters. Both AD's are dated September 18, 2002.

Issued in Fort Worth, Texas, on March 24, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–7596 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–47571; File No. S7–07–03]

RIN 3235–AI78

Request for Comment on the NYSE Petition Relating to Participant Fee Exemptions

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') seeks comment on a petition (''NYSE Petition'') submitted by the New York Stock Exchange, Inc. (''NYSE''), as a member of the Consolidated Tape Association (''CTA''). The NYSE Petition requests that the Commission amend the CTA Plan and the CQ Plan (collectively, the ''Plans'') to delete the provisions that exempt any participant in the Plans (''Participant'') from market data fees if the Participant receives the data for its internal use in regulating its market (''Participant Fee Exemptions''). The NYSE Petition would require all Participants to pay for CTA and CQS market data whether such data is received or used for regulation or other purposes. The Commission seeks comment on whether it should act on the NYSE Petition and the effects that eliminating the Participant Fee Exemptions would have on Participants in the National Market System.

DATES: Comments must be received on or before May 1, 2003.

ADDRESSES: To help us process and review your comments more efficiently,

comments should be sent by one method only.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–07–03. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001: Alden S. Adkins at (202) 942–0180; Katherine A. England at (202) 942–0154; Sapna C. Patel at (202) 942–0166; or Ian K. Patel at (202) 942–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section XII(b)(iv) of the CTA[2] Plan and section IX(b)(iv) of the CQ Plan provide, in relevant part, that no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price and quotation information, provided that such information is: (1) Furnished to the Participant ''only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant''; (2) used by the Participant ''solely for regulatory and surveillance purposes, or for any other approved purposes''; and (3) not ''made available [by the Participant] to any person not located within or on, such premises or trading floor.''[3]

On February 16, 2001, the NYSE filed the NYSE Petition with the Commission requesting that the Commission, pursuant to Section 11A of the Act[4] and Rule 11Aa3–2(b)(2) thereunder,[5] amend the CTA and CQ Plans to remove the Participant Fee Exemptions.[6] The NYSE Petition is described in more detail in Part II below. We note that this is not the first time the Commission has been asked to take action related to these paragraphs of the Plans.[7]

II. Summary of the NYSE Petition

The NYSE is requesting that the Commission, pursuant to Rule 11Aa3–2(b)(2) of the Act, amend the CTA and CQ Plans to delete the Participant Fee Exemptions. The Participant Fee Exemptions are found in the section of each Plan that regulates Plan expenses and revenues, including the imposition of market data charges on data recipients. They specify that each of the Participants is exempt from market data charges (other than access fees) if it is in compliance with the requisite market data contract. According to the Participant Fee Exemptions, no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price information, provided that such information is: (1) Furnished to the Participant ''only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant'; (2) used by the Participant ''solely for regulatory and surveillance purposes, or for any other approved purposes'; and (3) not ''made available [by the Participant] to any person not located within or on, such premises or trading floor.''

The NYSE states that the Participant Fee Exemptions, adopted in 1979, applied to practices used by the NYSE and AMEX at that time. However, as the technological and structural environment of the markets have changed, the NYSE represents that many Participants believe that the Participant Fee Exemptions are no longer desirable. The NYSE believes that the Participant Fee Exemptions create perceived inequities and interpretative disputes over their plain meaning. To address this problem, the NYSE requests that the Commission amend the Plans to delete Section XII(b)(iv) of the CTA Plan, and Section IX(b)(iv) of the CQ Plan, which would effectively eliminate the Participant Fee Exemptions in their entirety.

The NYSE believes that the elimination of the Participant Fee Exemptions will satisfy the standards of fairness mandated by the Act and the avoidance of unreasonable discrimination.[8] The NYSE, however, asserts that an alternative to eliminating the Participant Fee Exemptions would be to expand them in an attempt to level the playing field among market makers. However, the NYSE believes that this would simply redraw the boundaries of fee exemptions for devices, which would only complicate the surveillance of market data, as new trading structures and technologies change the nature of such boundaries. Further, the NYSE asserts that such an alternative would simply result in future disputes over the boundaries of fee exemptions for devices. The NYSE also believes that expanding fee exemptions would only complicate market data administration and increase the policing burden.

The NYSE believes that favorable action on the NYSE Petition by the Commission would be beneficial in several ways. First, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate future grievances relating to the application of the Participant Fee Exemptions by eliminating the perception of inequity that the Participant Fee Exemptions have caused, or may cause in the future. Second, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate the deviation of revenue sharing among the Participants away from the revenue sharing formulae. Finally, the NYSE believes that the elimination of the

[1] Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

[2] CTA is an association consisting of representatives from the American Stock Exchange LLC (''AMEX''); The Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Exchange, Inc.; the Philadelphia Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; and the Chicago Board Options Exchange, Inc. CTA's function is to oversee the dissemination, on a current and continuous basis, of last sale prices of transactions in securities listed on a national securities exchange.

[3] The CTA Plan, pursuant to which markets collect and disseminate last sale price information for securities listed on national securities exchanges, is a ''transaction reporting plan'' under Rule 11Aa3–1 of the Securities Exchange Act of 1934 (''Act''), 17 CFR 240.11Aa3–1, and a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for securities listed on national securities exchanges, is also a ''national market system plan'' under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 240.11Aa3–2(b)(2).

[6] *See* letter to Jonathan G. Katz, Secretary, Commission, from Robert G. Britz, Group Executive Vice President, NYSE, dated February 14, 2001.

[7] *See In the Matter of the Application of the Chicago Board Options Exchange,* Administrative Proceeding File No. 3–10561 (March 13, 2002) and *In the Matter of the Application of the Chicago Board Options Exchange,* Administrative Proceeding File No. 3–10561 (March 5, 2003). *See also In the Matter of the Application of the Cincinnati Stock Exchange, Inc.,* Administrative Proceeding File No. 3–9967.

[8] The NYSE believes that repealing the Participant Fee Exemptions would place the Plans on equal footing with the national market system plan governing market data relating to over-the-counter securities, which does not provide for similar fee exemptions for participants, and which requires the participating markets and their remotely located market makers to pay the plan's fees.

Participant Fee Exemptions would allow each Participant to decide individually whether or not to pass the fees for market data through to the members that use such data.

III. General Request for Comments

The Commission is seeking comment on the NYSE Petition in general. More specifically, the Commission is requesting comments on whether it should act on the NYSE Petition. The Commission is also seeking comment on the effects of the NYSE Petition on Participants and on the National Market System as a whole.

Dated: March 26, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7730 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[REG–141097–02]

RIN 1545–BB18

Excise Taxes; Communications Services, Distance Sensitivity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of toll telephone service for purposes of the communications excise tax. These regulations affect providers and purchasers of communications services.

DATES: Written and electronic comments and requests for a public hearing must be received by June 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–141097–02), 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:PA:RU (REG–141097–02), 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 *http: www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622–7180; concerning the regulations, Cynthia McGreevy (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Facilities and Services Excise Tax Regulations (26 CFR part 49) relating to the definition of toll telephone service.

Section 4251 imposes tax on amounts paid for certain communications services, including local and toll telephone service. Section 4252(b)(1) provides that toll telephone service means a telephonic quality communication for which there is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication.

Section 4252(b)(1), as enacted in 1965, describes the long distance telephone service sold to residential and most business subscribers under the 1965 Federal Communications Commission rules. At that time, the charge for a long distance telephone call increased as the duration of the call increased and generally increased as the distance between the originating telephone station and the terminating telephone station increased. By the late 1990's, most carriers had moved toward a fee structure that includes a flat per-minute rate for domestic calls.

In 1979, the Treasury Department published Rev. Rul. 79–404 (1979–2 C.B. 382), which stands for the principle that a long distance telephone call for which the charge varies with elapsed transmission time but not with distance is toll telephone service described in section 4252(b)(1).

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 Cynthia McGreevy, 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 in 26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 49 is proposed to be amended as follows:

PART 49—FACILITIES AND SERVICES EXCISE TAXES

1. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

2. Section 49.4252–0 is added to read as follows:

§ 49.4252–0 Section 4252(b)(1); distance sensitivity.

(a) *In general.* For a communications service to constitute toll telephone service described in section 4252(b)(1), the charge for the service need not vary with the distance of each individual communication.

(b) *Effective date.* This section applies to amounts paid on and after the date of publication of these regulations in the **Federal Register** as final regulations.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–7813 Filed 3–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; corrections.

SUMMARY: This document corrects errors that appeared in MSHA's preamble and proposed rule for Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On March 6, 2003, (68 FR 10784), MSHA published a proposed rule in the **Federal Register** that would require mine operators to verify through sampling the effectiveness of the dust control parameters for each mechanized mining unit (MMU) specified in the mine ventilation plan. For samples to be valid, the operator would be required to sample on a production shift during which the amount of material produced by a MMU is at or above the verification production level using only the dust control parameters listed in the ventilation plan.

The **Federal Register** will be publishing additional corrections to printing errors.

Please make the following corrections to that preamble:

1. On page 10819, column three, line 43, change [(3.54 mg/m^3/3]'' to read ''[(3.54 mg/m^3)/3]''.
2. On page 10819, column three, line 44, change [(174 μg/m^3/3]'' to read ''[(174 μg/m^3)/3]''.
3. On page 10835, column two, line 33, change ''bulletin report'' to read ''bulletin board.''
4. On page 10854, column one, line 69, change ''Table 11,'' to read ''Table 119.''
5. On page 10861, column two, line one, change ''*http://wwww.msha.gov/REGSINFO.HTM*'' to read ''*http://www.msha.gov/REGSINFO.HTM*''.

Dated: March 21, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–7753 Filed 3–31–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; reopening of record; correction.

SUMMARY: This document corrects errors which appeared in a notice of reopening addressing the joint Department of Labor and Department of Health and Human Services proposed rule, ''Determination of Concentration of Respirable Coal Mine Dust.''

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On March 6, 2003 (68 FR 10940) MSHA published a notice of reopening addressing the July 7, 2000 proposed rule, (65 FR 42068), Determination of Concentration of Respirable Coal Mine Dust.

The proposed rule announced that the Secretary of Labor and the Secretary of Health and Human Services would find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries proposed to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single shift sampling.

This document makes the following correction to the notice of reopening only as published on March 6, 2003.

Correction

On page 10947, column one, line 50, change the equation

$$A = P_{y'} - P_{x'}$$

where $y' = y/x$ and x and $x' = e^{a0xage}$

to read

$$\Delta' = P_{y'} - P_{x'}$$

where $y' = y/x$ and $x' = e^{a_0 + a_1 \times age}$

Dated: March 21, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–7754 Filed 3–31–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–02–129]

RIN 2115–AA98

Anchorage Regulations; Rockland, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations for Rockland Harbor by redesignating anchorage ground ''C'' as a special anchorage area and reorienting anchorage ground ''A''. This proposed action is necessary to (1) alert mariners that vessels moored within special anchorage ''C'', are not required to sound signals or display anchor lights or shapes, and (2) provide a wider navigable channel between the two anchorages. This action is intended to increase the safety of life and property on navigable waters, improve the safety of anchored vessels in both anchorage ''A'' and the special anchorage area, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must reach the Coast Guard on or before June 2, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan) (CGD01–02–129), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–129), indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of comments received.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Office of Aids to Navigation Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule is in response to a request made by the City of Rockland and Hartley Marine Services, Rockland, Maine, to accommodate the increased number of vessels mooring in Penobscot Bay, Rockland Harbor, and provide for safe navigation between the anchorages within that harbor. This proposed rule would re-designate anchorage ground ''C'', identified in 33 CFR 110.130(a)(3), as a special anchorage area and reorient anchorage ''A'', identified in 33 CFR 110.130(a)(1).

The Coast Guard has determined that the small commercial and recreational vessels now anchoring in anchorage ''C'' do not have the ability to maintain anchor lights sufficient to meet anchorage ground requirements. Vessel traffic, as well as users of anchorage ''C'', would transit and anchor more safely when anchorage ''C'' is designated a special anchorage area, limited to vessels less than 20 meters in length, since transiting vessels will neither expect sound signals nor anchor lights or shapes from all moored vessels. Thus, establishing a special anchorage area will better meet future vessel traffic expectations of that area when it is redesignated as such and limited to vessels no greater than 20 meters in length.

In order to facilitate the safe and efficient flow of vessel traffic and commerce between anchorages ''A'' and the newly designated special anchorage area, the Coast Guard proposes to reorient anchorage ''A''. Reorienting anchorage ''A'' would provide a wider channel between the two above-mentioned anchorages. Additionally, a wider channel would allow safer passage for vessels anchoring in anchorage ''A'' and the special anchorage area as well as vessel traffic transiting via Atlantic Point.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Discussion of Proposed Rule

This proposed rule redesignates one anchorage ground and reorients another. The Coast Guard proposes to amend 33 CFR 110.130, Rockland Harbor, by removing anchorage ground ''C'', identified in 33 CFR 110.130(a)(3), then establishing that same area as a special anchorage area. The special anchorage area will be established and identified in an added section, 33 CFR 110.4. The special anchorage area would be limited to vessels no greater than 20 meters in length. Vessels not more than 20 meters in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) or exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area.

The Coast Guard also proposes to reorient anchorage ground ''A'', identified in 33 CFR 110.130(a)(1) to create a wider channel between anchorage ''A'' and the special anchorage area. Reorienting anchorage ''A'' would facilitate the safe and efficient flow of vessel traffic and commerce between anchorages ''A'' and the newly designated special anchorage area. The wider channel would also allow unrestricted navigation for large commercial vessels and fishing vessels requiring access to facilities in the vicinity of Atlantic Point.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the harbor, the changing needs of recreational, fishing and commercial vessels, and to make the best use of the available navigable water. This proposed rule is in the interest of safe navigation and protection of the Port of Rockland and the marine environment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule should have minimal economic impact on lobster fishing vessels and owners or operators of vessels intending to transit to facilities in the vicinity of Atlantic Point or anchor in the newly created special anchorage area in Rockland Harbor.

This finding is based on the fact that the proposed change in the anchorage grounds and establishment of a special anchorage area conform to the changing geography of the harbor, the changing needs of commercial vessels and the increasing amount of recreational traffic in the area. They are all proposed in the interest of safe navigation and protection of the marine environment.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**. This proposed rule fits paragraph 34(f) as it revises one anchorage ground and establishes a special anchorage area.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; Department of Homeland Security Delegation No. 0170 and 33 CFR 1.05–1(g).

2. Add § 110.4 to read as follows:

§ 110.4 Penobscot Bay, Maine.

(a) *Rockland Harbor.* Beginning at a point bearing 244°, 1,715 yards, from Rockland Breakwater Light; thence 260°, 490 yards, to a point bearing 248° from Rockland Breakwater Light; thence 350°, 580 yards, to a point bearing 263° from Rockland Breakwater Light; thence 83°, 480 yards, to a point bearing 263° from Rockland Breakwater Light; and thence 169°, 550 yards, to the point of beginning.

This area is limited to vessels no greater than 20 meters in length.

Note to paragraph (a): This area is primarily for use by yachts and other recreational craft. Temporary floats or buoy for marking the location of the anchor may be used. All moorings shall be so placed that no vessel, when anchored, shall at any time extend beyond the limits of the area. All anchoring in the area shall be under the supervision of the local harbormaster or such authority as may be designated by authorities of the City of Rockland, Maine. Requests for placement of mooring buoys shall be directed to the local government. Fixed mooring piles or stakes are prohibited.

3. Remove § 110.130(a)(3).

4. Revise § 110.130 to read as follows:

§ 110.130 Rockland Harbor, Maine.

(a) *The anchorage grounds.* (1) Anchorage A. Beginning at a point bearing 158°, 1,075 yards, from Rockland Breakwater Light; thence 252°, 2,020 yards, to a point bearing 224° from Rockland Breakwater Light; thence 345°, 740 yards, to a point bearing 242° from Rockland Breakwater Light; thence 72°, 1,300 yards, to a point bearing 222° from Rockland Breakwater Light; and thence 120°, 1,000 yards, to the point of beginning.

(2) * * *

(b) *Regulations.* (1) Anchorages A and B are general anchorage grounds reserved for merchant vessels, commercial vessels or passenger vessels over 65 feet in length. Fixed moorings, piles or stakes are prohibited.

(2) A distance of approximately 500 yards shall be left between Anchorages A and B for vessels entering or departing from the Port of Rockland. A distance of approximately 100 yards shall be left between Anchorage A and the Special Anchorage Area for vessels entering or departing facilities in the vicinity of Atlantic Point. Any vessel anchored in these anchorages shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

* * * * *

Dated: March 3, 2003.

Vivien S. Crea,

RADM, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–7806 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–202]

RIN 1625–AA00

Safety Zones; Northeast Ohio

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish Safety Zones for annual fireworks displays located in Northeast Ohio. These rules are intended to manage vessel traffic in Northeast Ohio during each event to protect life and property.

DATES: Comments must be received on or before 60 days from the publication date of this notice.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office (MSO) Cleveland (CGD09–03–202), 1055 East Ninth Street, Cleveland, Ohio, 44114. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–202), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A total of eight permanent safety zones would be established in Northeast Ohio for annual firework displays. The safety zones would be activated only during a firework display at their respective location. There is a total of ten separate annual firework events in Northeast Ohio. The safety zones would be established to protect the public from potential firework debris.

Discussion of Proposed Rule

The safety zones would be established around the launch site in the following areas:

(1) Cleveland Harbor and Lake Erie, north of Voinovich Park;

(2) Rocky River and Lake Erie, west of the river entrance;

(3) Lake Erie, North of Lakewood Park;

(4) Black River (2 locations);

(5) Mentor Harbor Beach, west bank of harbor entrance;

(6) Ashtabula, north of Walnut Beach Park; and

(7) Fairport Harbor, east of harbor entrance.

The size of each safety zone was determined using National Fire Protection Association, local fire department standards.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zones during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the Safety Zone under Coast Guard escort with the permission of the Captain of the Port Cleveland. Before the effective period, the Coast Guard would issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can

better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES**.)

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.919 to read as follows:

§ 165.919 Safety Zones; Annual fireworks events in the Captain of the Port Cleveland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *City of Cleveland 4th of July Fireworks Display, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.785′ N, 081°42.542′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting at 41°30.443′ N, 081°42.215′ W. All geographic coordinates are based upon North American Datum 1983 (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(2) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH.*

(i) *Location.* Same as (1)(i).

(ii) *Expected date.* One Saturday evening in late July or August.

(3) *Browns Football Halftime Fireworks Display, Cleveland, OH.*

(i) *Location.* Same as (1)(i).

(ii) *Expected date.* One Sunday afternoon during NFL football season.

(4) *Lakewood City Fireworks Display, Lakewood, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie bounded by the arc of a circle with a 500-yard radius with its center approximate position 41° 29.755′ N,081° 47.780′ W (off of Lakewood Park)(NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(5) *Cleveland Yachting Club Fireworks Display, Rocky River, OH.*

(i) *Location.* All waters and adjacent shoreline of the Rocky River and Lake Erie bounded by the arc of a circle with a 200-yard radius with its center at Sunset Point on the western side of the mouth of the Rocky River in approximate position 41°29.428′ N, 081°50.309′ W (NAD 1983).

(ii) *Expected date.* One day during the second or third week of July.

(6) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH.*

(i) *Location.* The waters of Lorain Harbor bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance on the end of the break wall near Spitzer's Marina in approximate position 41°28.591′ N, 082°10.855′ W (NAD 1983).

(ii) *Expected date.* One day during the first week of July.

(7) *Lorain Port Fest Fireworks Display, Lorain, OH.*

(i) *Location.* All waters and adjacent shoreline of Lorain Harbor bounded by the arc of a circle with a 250-yard radius with its center at approximate position 41°28.040′ N, 082°10.365′ W.

(ii) *Expected date.* One day during the third or fourth week of July.

(8) *Mentor Harbor Yacht Club Fireworks Display, Mentor, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie and Mentor Harbor bounded by the arc of a circle with a 200-yard radius with its center in approximate position 41°43.200′ N, 081°21.400′ W (west of the harbor entrance)(NAD 1983).

(ii) *Expected date.* One day during the first week of July.

(9) *Fairport Mardi Gras Fireworks Display, Fairport Harbor, OH.*

(i) *Location.* All waters and adjacent shoreline of Fairport Harbor and Lake Erie bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance at Fairport Harbor Beach in approximate position 41°45.500′ N, 081°16.300′ W (NAD 1983).

(ii) *Expected date.* One day during the first or second week of July.

(10) *Ashtabula Area Fireworks Display, Ashtabula, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie and Ashtabula Harbor bounded by the arc of a circle with a 300-yard radius with its center west of the harbor in approximate position 41°54.167′ N, 080°48.416′ W (NAD 83).

(ii) *Expected date.* One day during the first week of July.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Several of the safety zones in this regulation encompass portions commercial navigation channels but are not expected to adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Cleveland to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via the U.S. Coast Guard Patrol Commander (PAT COM) on Channel 16, VHF–FM.

(c) *Effective period.* The Captain of the Port Cleveland will publish at least 5 days in advance a Notice in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section is in effect.

Dated: March 10, 2003.

Lorne W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 03–7805 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA183–4198b; FRL–7465–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for five major sources of nitrogen oxides (NO_X) located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this 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 May 1, 2003.

ADDRESSES: Written comments should be addressed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, 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; and 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: Betty Harris at (215) 814–2168 or Rose Quinto at (215) 814–2182 or via e-mail at *harris.betty@epa.gov* or *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Pennsylvania's Approval of NO_X RACT Determinations for Five Individual Sources, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 5, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–7641 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN214–1b; FRL–7470–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Indiana's shipbuilding and ship repair volatile organic compound (VOC) rules into the Indiana State Implementation Plan (SIP). This request for a SIP revision, which was submitted by the Indiana Department of Management on August 8, 2001, revises exemption levels and compliance, recordkeeping and reporting requirements and is being approved because these revisions are enforceable and in some cases more stringent than the existing rules.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision request as a direct final rule without prior proposal because EPA views this action as noncontroversial and

anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we 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. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by May 1, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's SIP revision request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to Indiana's SIP which revises exemption levels and compliance and recordkeeping requirements in its shipbuilding and ship repair VOC rules. This revision was requested by Indiana on August 8, 2001, to streamline some of the overlapping requirements between the national emission standards for hazardous air pollutants and its shipbuilding and ship repair VOC rules.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: March 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–7644 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 1625–AA38

Rates for Pilotage on the Great Lakes; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice correcting notice of proposed rulemaking, announcing public meeting, and extending period for comment.

SUMMARY: This document corrects the notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 23, 2003. It also announces a public meeting for April 14, 2003. And it also extends the NPRM's comment period through May 1, 2003, to afford the general public an opportunity for comment on the NPRM as here corrected. A review and audit of this NPRM, conducted after publication, identified an erroneous number and an error in the formula used to compute return on investment.

DATES: Effective on April 1, 2003. A public meeting will take place from 10 a.m. to 4 p.m. on April 14, 2003. Comments and related material must reach the Docket Management Facility on or before May 1, 2003.

ADDRESSES: A public meeting will take place in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593–0001. This meeting may close early if all business is finished. To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility (USCG–2002–11288), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice or questions concerning the docket call or e-mail Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at telephone 202–267–1241, or tlawler@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–2002–11288], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a

stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the proposed rule in view of them.

Public Meeting

A public meeting will take place from 10 a.m. to 4 p.m. on April 14, 2003, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593–0001. This meeting may close early if all business is finished.

Please send requests to make oral presentations to: Tom Lawler, Commandant (G–MW–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

Whether or not able to attend the public meeting, people should send written comments to the Docket Management Facility, as directed under **ADDRESSES**, during the comment period.

Need for Correction

The NPRM, as published, contained an erroneous number for the total of District 1's operating expenses and understated the total revenue required by each of the three Districts to cover operating expenses, pilots' target compensation, and return on investment. This was due to an error in the calculation used to compute the total dollar return on the investment base of one pilots' association. Because of this error, the percentage of pilotage-rate adjustment in rates for Areas 4, 5, 7, and 8 was understated by 1%; and because of this the proposed charges for pilotage services in those areas was understated, also by 1%.

Correction of Publication

Accordingly, we correct the NPRM, FR Doc. 03–1461, published January 23, 2003 (68 FR 3202), as follows (with upper-case or lower-case initial letters, as appropriate):

1. On page 3204, in the table contained in the paragraph titled ''What Is the Coast Guard Proposing in This Rulemaking?'', change the percentage for Area 4, increase 31%, to increase 32%; change the percentage for Area 5, increase 17%, to increase 18%; change the percentage for Area 7, increase 3%, to increase 4%; and change the percentage for Area 8, increase 28%, to increase 29%.

2. On page 3204, in Table A–DISTRICT ONE Step 1, change the figure under Total District One to $599,506.

3. On page 3204, in Table A–DISTRICT ONE Step 6, change:

Step 6, Adjustment determination	$1,356,243	$1,019,063	$2,375,306

to:

Step 6, Adjustment determination	$1,359,515	$1,022,335	$2,381,850

4. On page 3204 in Table B.—DISTRICT TWO Steps 6 and 7, change:

Step 6, Adjustment determination	$925,306	$1,712,340	$2,637,646
Step 7, Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

to:

Step 6, Adjustment determination	$931,178	$1,721,525	$2,652,703
Step 7, Adjustment of pilotage rates	1.32 (+32%)	1.18 (+18%)	1.22 (+22%)

5. On page 3204 in Table C.—DISTRICT THREE Step 6, change:

Step 6, Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

To:

Step 6, Adjustment determination	$1,848,423	$1,161,943	$1,325,104	$4,335,471

to:

6. On page 3205, in Table C.—DISTRICT THREE Step 7, change:

Step 7, Adjustment of pilotage rate	1.20 (+20%)	1.03 (+3%)	1.28 (+28%)	1.17 (+17%)

to:

Step 7, Adjustment of pilotage rate	1.20 (+20%)	1.04 (+4%)	1.29 (+29%)	1.17 (+17%)

7. On page 3211, in the paragraph titled ''Step 6: Adjustment Determination (Revenue Needed)'' change the table—

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment determination	$1,356,243	$1,019,063	$2,375,306

to:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment determination	$1,359,515	$1,022,335	$2,381,850

8. On page 3211, in the paragraph titled ''Step 6: Adjustment Determination (Revenue Needed)'' change the table—

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment determination	$925,306	$1,712,340	$2,637,646

to:

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment determination	$931,178	$1,721,525	$2,652,703

9. On page 3211, in the paragraph titled ''Step 6: Adjustment Determination (Revenue Needed)'' change the table—

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

to:

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment determination	$1,848,423	$1,161,943	$1,325,104	$4,335,471

10. On page 3212, change the table—

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

to:

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment of pilotage rates	1.32 (+32%)	1.18 (+18%)	1.22 (+22%)

11. On page 3212, change the table—

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment of pilotage rate	1.20 (+20%)	1.03 (+4%)	1.28 (+28%)	1.17 (+17%)

to:

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment of pilotage rate	1.20 (+20%)	1.04 (+4%)	1.29 (+29%)	1.17 (+17%)

12. On page 3213, § 401.407 [Amended] in § 401.407(a), in change the table—

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$439	$439
Docking or Undocking	338	338
Any Point on the Niagara River below the Black Rock Lock	N/A	862

to:

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$442	$442
Docking or Undocking	341	341
Any Point on the Niagara River below the Black Rock Lock	N/A	869

13. On page 3214, in § 401.407(b), change the table—

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal Port Huron Change Point	$1,156	$682	$1,500	$1,156	N/A
St. Clair River	[1] 2,012	[1] 2,332	1,513	1,176	$837
Detroit or Windsor or the Detroit River	[1] 2,012	N/A	1,513	1,513	682
Detroit Pilot Boat	1,156	1,500	682	N/A	1,513
	837	1,156	N/A	N/A	1,513

[1] When pilots are not changed at the Detroit Pilot Boat.

to:

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,166	$688	$1,513	$1,166	N/A
Port Huron Change Point	[1] 2,030	[1] 2,352	1,526	1,186	$844
St. Clair River	[1] 2,030	N/A	1,526	1,526	688
Detroit or Windsor Or the Detroit River	1,166	1,513	688	N/A	1,526
Detroit Pilot Boat	844	1,166	N/A	N/A	1,526

[1] When pilots are not changed at the Detroit Pilot Boat.

14. On page 3214, § 401.410 [Amended] in § 401.410(b), change the table—

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,479	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,479	557	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,240	557	N/A
Sault Ste. Marie, MI	1,240	557	N/A
Harbor Movage	N/A	N/A	$557

to:

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,493	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,494	$563	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,252	563	N/A
Sault Ste. Marie, MI	1,252	563	N/A
Harbor Movage	N/A	N/A	$563

15. On page 3214, in § 401.410(c), change the table—

Service	Lake Superior
Six-Hour Period	$334
Docking or Undocking	319

to:

Service	Lake Superior
Six-Hour Period	$337

Service	Lake Superior
Docking or Undocking	321

Dated: March 24, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–7703 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register

Vol. 68, No. 62

Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

2002 Crop Year Crambe and Sesame Seed Marketing Assistance Loan Deficiency Payments, and Direct and Counter Cyclical Program

AGENCIES: Commodity Credit Corporation, Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Department of Agriculture is exercising its discretionary authority to designate crambe and sesame seed as eligible commodities for the 2002 crop year for the Direct and Counter Cyclical Program (DCP) and for Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) from the Commodity Credit Corporation (CCC). The intended effect of this notice is to inform the public of the USDA decision designating crambe and sesame seed as eligible oilseeds.

DATES: To be eligible, producers of 2002-crop crambe or sesame seed must:

(1) Submit a request for MAL and LDP at their local Farm Service Agency Service Center by close of business on March 31, 2003.

(2) Make their DCP base acreage election before May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, Price Support Division, FSA, USDA, 1400 Independence Avenue, SW., Room 4789, STOP 0512, Washington, DC 20250–0514, by phone at (202) 720–7901, or e-mail at *KGraham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

MAL and LDP Eligibility

Section 1421.3 of 7 CFR part 1421 defines ''Loan commodities'' to include ''other crops designated by CCC,'' and further defines ''other crops designated by CCC,'' to be, ''(3) As otherwise designated by CCC.'' Also, section 1421.5(a) provides that eligible loan commodities include, ''* * * and other crops designated by CCC.'' Accordingly, this notice announces the Agency's extension of MAL and LDP eligibility to include crambe and sesame seed for the crop year 2002.

Also, for the loan deficiency payments for 2002 crop crambe and sesame seed only, this notice announces that the Agency will waive section 1421.6(a)(1) of 7 CFR part 1421, which requires a producer to have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or loan deficiency payment. Producers who lost beneficial interest in the 2002-crop crambe or sesame seed are eligible for LDP's. For those LDP requests submitted after beneficial interest has been lost, the LDP rate will be based on the date beneficial interest was lost. Section 1421.6(a)(1) must be complied with and beneficial interest maintained in all other 2002-crop year commodities and for all commodities, including crambe and sesame seed, for a loan or LDP in subsequent years.

DCP Eligibility

Section 1412.103 of 7 CFR part 1412 defines ''Covered commodity'' to include, ''* * * other oilseeds as determined by the Secretary.'' and defines ''Other oilseeds'' to include the words ''* * * or, if determined and announced by CCC, another oilseed.'' This notice announces the extension of the CCC Direct and Counter Cyclical Program under 7 CFR part 1412 to include crambe and sesame seed as eligible commodities for the crop year 2002.

FSA and CCC are taking these actions under section 1421.2(e) of 7 CFR part 1421, and section 1412.102(e) of 7 CFR part 1412, which allow exceptions to selected program requirements. The intent is to encourage development of alternative enterprises for producers, greater planting flexibility and rural development. All other requirements for program eligibility in 7 CFR parts 1412 or 1421 will apply.

Sign-up for marketing assistance loans and requests for loan deficiency payments (LDP) must be completed by March 31, 2003. Marketing assistance loan applications, and LDP request forms are available electronically through the USDA eForms website for downloading. Base elections for DCP, loan applications and LDP request forms may be submitted at the FSA county offices.

Signed at Washington, DC, on March 27, 2003.

James R. Little,

Administrator, Farm Service Agency, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–7937 Filed 3–28–03; 2:22 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–143, Claim for Reimbursement (Summer Food Service Program)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the Food and Nutrition Service (FNS) use of Form FNS–143, Claim for Reimbursement. The Form is used to collect data to determine the amount of reimbursement sponsoring organizations participating in the Summer Food Service Program (SFSP) are eligible to receive.

DATES: To be assured of consideration, comments must be received by June 2, 2003.

ADDRESSES: Send comments or requests for copies of this information collection to Terry A. Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302.

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 will 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter if public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Forms FNS–143, Claim for Reimbursement (Summer Food Service Program).

OMB Number: 0584–0041.

Expiration Date: March 31, 2003.

Type of Request: Extension of a currently approved collection.

Abstract: The SFSP claim for reimbursement form, FNS–143, is used to collect meal and cost data from sponsoring organizations whose participation in this program is administered directly by FNS Regional Offices (Regional Office Administered Programs or ROAP). FNS Regional offices directly administer participation in this program for sponsoring organizations in Virginia and Michigan. In order to determine the amount of reimbursement sponsoring organizations are entitled to receive for meals served, they must complete these forms. The completed forms are submitted to the Child Nutrition Payments Center at the FNS Mid-Atlantic Regional Office where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the SFSP is based on performance which is measured as an assigned rate for operations and for administration per meal served, with cost comparisons to actual operational and administrative costs. To fulfill the earned reimbursement requirements set forth in SFSP regulations issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on form FNS–143. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are sponsoring organizations participating in the SFSP under the auspices of the FNS ROAP.

Estimated Total Number of Respondents: 212.

Estimated Number of Responses Per Respondent: 4.

Estimated Hours Per Response: .5.

Estimated Total Annual Burden on Respondents: 424.

Dated: March 25, 2003.

George A. Braley,

Associate Administrator.

[FR Doc. 03–7589 Filed 3–31–03; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, April 18, 2003 at 9:30 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: April 18, 2003.

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

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

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 p.m.

Dated: March 25, 2003.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–7738 Filed 3–31–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, April 3, 2003, at the Family Services Woodfield, 475 Clinton Ave., Bridgeport, CT 06605. The purpose of this meeting will be orientation and planning future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116) or Patrick Johnson, Jr., chair, (860) 242–2274 ext 3801. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–7720 Filed 3–31–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of April 2003, interested parties may request administrative review of the following orders, findings, or suspended

investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
France: Sorbitol, A–427–001	4/1/02–3/31/03
Norway: Fresh and Chilled Atlantic Salmon, A–403–801	4/1/02–3/31/03
The People's Republic of China: Brake Rotors, A–570–846	4/1/02–3/31/03
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	4/1/02–3/31/03
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	1/1/02–12/31/02
Suspension Agreements	
None	

In accordance with § 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2003. If the Department does not receive, by the last day of April 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 03–7788 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Representatives and Alternates to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant seats on its Reserve Advisory Council (Council): (1) Conservation, (2) Research, (1) Ocean-Related Tourism, (1) Recreational Fishing, (1) Education, (1) Citizen-At-Large. Council Representatives and Alternates are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. Applicants who are chosen as Representatives or Alternates should expect to serve three-year terms, pursuant to the Council's Charter. Persons who are interested in applying for membership on the Council as either a Representative or Alternate may obtain an application from the person or website identified under the **ADDRESSES** section below. This notice extends an original application period that began February 3 and ended on February 28. Applications received during this extension from April 1, 2003 to May 1, 2003 will be accepted for consideration. Applicants who applied during the period from February 3 to February 28 will be contacted to clarify their original applications.

DATES: Completed applications must be postmarked no later than May 1, 2003.

ADDRESSES: Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000

(Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00) and Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the website listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for Council Representatives and Alternates for the following seven citizen/constituent positions on the Council:

1. Two (2) representatives from the non-Federal science community (Research) with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

2. One (1) representative from a non-governmental wildlife/marine life, environmental, and/or conservation organization (Conservation).

3. One (1) representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands (Recreational Fishing).

4. One (1) representative from the ocean-related tourism industry (Ocean-Related Tourism).

5. One (1) representative from the non-Federal community with experience in education and outreach regarding marine conservation issues (Education).

6. One (1) citizen-at-large representative (Citizen-at-Large).

Current Reserve Council Representatives and Alternates may reapply for these vacant seats.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 21, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–7734 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for Pacific ocean perch and widow rockfish will hold a work session which is open to the public.

DATES: The Pacific ocean perch and widow rockfish Stock Assessment Review Panel will meet beginning at 1 p.m., April 14, 2003. The meeting will continue on April 15, 2003, beginning at 8 a.m. through April 18, 2003. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The Pacific ocean perch and widow rockfish Stock Assessment Review Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.). A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: March 27, 2003.

Theophilus R. Brainerd,

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

[FR Doc. 03–7783 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032503B]

Endangered Species; File No. 1429

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 1, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

Permits,Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Patrick Opay (301) 713–1401, or Carrie Hubard (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. The researchers propose to work cooperatively with U.S. pelagic longline fishermen in the Northeast Distant area (NED) to conduct fishery-dependent testing. The purpose of the research is to develop and test methods to reduce bycatch that occurs incidental to commercial, pelagic longline fishing. The goal is to develop a means to reduce turtle take and retain viable fishing performance that may be adopted by the U.S. pelagic longline fleet as an alternative to more restrictive sea turtle protection measures, such as closures. The technologies developed through this research are expected to be transferrable to other nations' fleets as well, so this work will address the larger problem of sea turtle bycatch by pelagic longlines throughout the entire Atlantic Ocean and in other regions where sea turtle bycatch is a concern. The research will also attempt to determine the feasibility of using pop-up satellite tags to study the post-hooking survival of turtles impacted by the fishery.

Sea turtles are expected to be taken as they entangle in and/or are hooked by the longline gear deployed in this experiment. An additional 15 free-swimming loggerhead turtles may be dipnetted from the surface. The applicant proposes to take 217 loggerheads (202 to be taken by the experimental fishery and 15 dipnetted from the surface), 160 leatherbacks, 2 green turtles, 2 hawksbills, 2 olive ridleys, 2 Kemp's ridleys, and 2 unidentified hardshell species. The applicant is requesting authorized mortalities of 2 loggerheads, 2 leatherbacks, as well as 1 green, Kemp's ridley, olive ridley, hawksbill, or unidentified hardshell in aggregate. All takes will occur in the NED of the Atlantic Ocean. The applicant is requesting a 1-year permit.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: March 26, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7784 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Request for Approval of a Collection of Information—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than June 2, 2003.

ADDRESSES: Written comments should be captioned ''Residential Garage Door Operators'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to

comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment. (The Consumer Product Safety Improvement Act of 1990, Pub. L. 101–608, 104 Stat. 3110.) The entrapment protection requirements of UL Standard 325 are codified into the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR part 1211.

The Office of Management and Budget (OMB) approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on June 30, 2003. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

The Improvement Act provides that UL Standard 325 shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 14(b) of the CPSA allows firms that are required to issue certificates of compliance to use an independent third-party organization to conduct the testing required to support the certificate of compliance.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require establishment and maintenance of records necessary to implement the CPSA or determine compliance with rules issued under the authority of the CPSA. On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR part 1211, subparts B and C.

The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard.

The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 22 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 40 hours annually on the collection of information for a total of about 880 hours. Using an hourly rate of $42.30, based on Total compensation, private goods-producing section, managerial, executive, and administrative category, Bureau of Labor Statistics, the total industry cost would be $37,224.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 27, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–7761 Filed 3–31–03; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for an Organization To Administer the President's Volunteer Service Awards

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds and request for proposals.

SUMMARY: The Corporation for National and Community Service (hereinafter ''the Corporation'') will enter into a cooperative agreement of up to three years with a single organization selected under this Notice to provide administrative and technical support in the development and implementation of the President's Volunteer Service Awards program. The Corporation seeks an organization that has, or can contract with others to acquire, expertise in marketing and publicity, awards fulfillment, database management, production and distribution of identity items, and event management. Commercial organizations, non-profit organizations, state and local government entities, institutions of higher education and Indian tribal organizations are all eligible to apply. The Executive Director of the President's Council on Service and Civic Participation at the Corporation (hereinafter the ''Executive Director'') will oversee the President's Volunteer Service Awards program. The Executive Director will work with the organization selected under this Notice and others to develop strategic partnerships that can build awareness, understanding, and distribution of the Awards.

The Corporation expects to provide approximately $100,000 in year one, and contingent upon performance and availability of funding, to provide up to approximately $250,000 in year two and up to approximately $250,000 in year three to the selected organization for technical and administrative assistance for the President's Volunteer Service Awards program. The selected organization must meet stated financial goals for all years that the cooperative agreement is in effect. Funding beyond year one is contingent upon satisfactory performance on financial and award fulfillment goals and the availability of appropriations for this purpose.

DATES: Proposals must be received by the Corporation by 5 p.m. Eastern time on April 25, 2003. The Corporation will not accept applications that are submitted by facsimile. Due to delays in delivery of regular U.S.P.S. mail to government offices, your application may not arrive in time to be considered. We suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline.

ADDRESSES: Submit proposals to the Corporation at the following address: Corporation for National and Community Service, Attention: Christine Benero, Room 8419, 1201 New York Avenue NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Christine Benero at the Corporation, telephone (202) 606–5000, ext. 193, (*cbenero@cns.gov*), facsimile (202) 575–2784, T.D.D. (202) 565–2799. This Notice, with the complete program application guidelines included, is available on the Corporation's Web site, at: *http://www.cns.gov/whatshot/notices.html.* Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: March 26, 2003.

Sandy Scott,

Deputy Director, Office of Public Affairs.

[FR Doc. 03–7626 Filed 3–31–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Transformational Communications Advanced Technology Study. The purpose of the meeting is to conduct a mid term review of the study. This meeting will be closed to the public.

DATES: March 31–April 1, 2003.

ADDRESSES: Bldg 201, Kirtland AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Maj John J. Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–7715 Filed 3–31–03; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the B–2 Maintenance Study and the Commander of Air Combat Command. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 4, 2003.

ADDRESSES: HQ, Air Combat Command.

FOR FURTHER INFORMATION CONTACT: Maj Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–7716 Filed 3–31–03; 8:45 am]

BILLING CODE 5001–5–P

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 May 1, 2003.

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: March 26, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.

Title: Reading Excellence Act Performance Report (KA).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 18.

Burden Hours: 24.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading Excellence Act.

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 2173. 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 Kathy Axt at *kathy.axt@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. 03–7719 Filed 3–31–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305M]

Institute of Education Sciences

ACTION: Notice inviting applications for grants to support education research for fiscal year 2003; Correction.

On January 6, 2003, a notice inviting applications for grants to support education research was published in the **Federal Register** (68 FR 656). On page 656, in the table, the column *Project Period* states that the duration of the project period is ''up to 36 months'' for the Teacher Quality Research program (84.305M). The *Project Period* for grants awarded under the Teacher Quality Research program is corrected to read ''up to 48 months.''

FOR FURTHER INFORMATION CONTACT: Harold Himmelfarb, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510f, Washington, DC 20208. Telephone: (202) 219–2031 or via the Internet: *harold.himmelfarb@ed.gov.*

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 persons listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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 edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 9501 *et seq.* (the ''Education Sciences Reform Act of 2002'', Title 1 of Public Law 107–279, November 5, 2002).

Dated: March 26, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–7811 Filed 3–31–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings to be announced in the **Federal Register**.

DATES: May 14, 2003, 9 a.m. to 12 p.m.

ADDRESSES: The Hamilton Crowne Plaza Hotel, 14th and K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to order by Mr. Wes Taylor, Chairman.
- Remarks by Honorable Spencer Abraham, Secretary of Energy (invited).
- Other Council business
- Presentation by Frank Burke, CONSOL Energy on generation efficiency & carbon management.
- Presentation by Bernhard Schlamadinger, Ph.D., Senior Scientist, on carbon sequestration project being conducted in the Lower Mississippi River Valley.
- Presentation by Dr. Howard J. Herzog, MIT, on geological sequestration options.
- Presentation by Mr. Dwain Spencer, SIMTECHE, on promising developments regarding costs of carbon capture and separation.
- Discussion of other business properly brought before the Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be make to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 26, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–7764 Filed 3–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Coal Policy Committee of the National Coal Council

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 29, 2003, 10 a.m. to 2 p.m.

ADDRESSES: Greenbrier Hotel, 300 West Main Street, White Sulphur Springs, West Virginia.

FOR FURTHER INFORMATION CONTACT: Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to discuss and act on the energy efficiency and carbon sequestration study.

Tentative Agenda:

- Call to order by Frank Burke.
- Review and discuss the Council study on energy efficiency and carbon sequestration.
- Discussion of other business properly brought before the Coal Policy Committee.
- Public Comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 26, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–7766 Filed 3–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–308–000]

CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

March 25, 2003.

Take notice that on March 20, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

First Revised Sheet No. 17
First Revised sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 31
First Revised Sheet No. 32

CEGT states that the purpose of this filing is to adjust CEGT's fuel percentages and Electric Power Costs Tracker pursuant to section 27 and 28 of its General Terms and Conditions.

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 385.314 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7775 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2569–000, ER02–2569–001, and ER02–2569–002]

The Clark Fork and Blackfoot, L.L.C.; Notice of Issuance of Order

March 25, 2003.

The Clark Fork and Blackfoot, L.L.C. (''Clark Fork'') filed an application for market-based rate authority, with accompanying tariff. The proposed market-based rate tariff provides for the wholesale sales of electric power, energy and certain ancillary services. Clark Fork also requested waiver of various Commission regulations. In particular, Clark Fork requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Clark Fork.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request 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 Clark Fork 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, Clark Fork 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 Clark Fork, 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 Clark Fork's issuances of securities or assumptions of liability.

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 Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7768 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–77–000 and RP03–311–000]

Order Proposing Revocation of Market-Based Rate Authority and Termination of Blanket Marketing Certificates

Issued March 26, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp.

1. This order directs Enron Power Marketing, Inc. and Enron Energy Services, Inc. (collectively, Enron Power Marketers) to show cause to the Commission in a paper hearing why their authority to sell power at market-based rates [1] should not be revoked by the Commission in light of their apparent engagement in gaming, in violation of Section 205(a) of the Federal Power Act's (FPA) requirement that rates be just and reasonable, as well as their apparent failure to disclose changes in their market shares to the Commission in violation of their market-based rate authority.[2] This order also initiates a proceeding under Section 206 of the FPA,[3] in Docket No. EL03–77–000, where the show cause filing will be considered.

2. This order also directs Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp. (collectively, Enron Gas Marketers) to show cause to the Commission in a paper hearing why the Commission should not terminate their blanket marketing certificates under Section 284.402 of the Commission's regulations [4] to make sales for resale at negotiated rates in interstate commerce of categories of natural gas subject to the Commission's Natural Gas Act (NGA) jurisdiction.[5] This order also institutes a proceeding under Sections 5 and 7 of the NGA, in Docket No. RP03–311–000, where the show cause filings will be considered.

3. This order is necessary to fulfill the Commission's obligation to monitor competitive markets in order to protect wholesale electricity and natural gas customers from unjust and unreasonable rates.

Background

4. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.[6]

5. On August 13, 2002, Staff released its Initial Report in Docket No. PA02–2–000.[7] In that Report, Staff recommended the initiation of various company-specific proceedings [8] to further investigate possible misconduct, and recommended several generic changes to market-based tariffs to prohibit the deliberate submission of false information or the deliberate omission of material information and to provide for the imposition of both refunds and penalties for violations.

6. As noted in Staff's Final Report, being publicly released concurrently with this order,[9] evidence indicates that the Enron Power Marketers appear to have engaged in gaming and misrepresentation, and also failed to disclose significant changes in their market shares to the Commission. In addition, the Staff's Final Report identifies evidence which indicates that certain Enron Gas Marketers apparently engaged in the manipulation of prices in natural gas markets.

Discussion

A. Proposed Market-Based Rate Revocation

7. We find that the Enron Power Marketers, based on the evidence discussed in the Final Report appear to have engaged in gaming, and failed to disclose significant changes in their market shares to the Commission.

8. The Commission's grant of authority to sell power at market-based rates, as opposed to at cost-based rates, depends on a functioning, competitive market for wholesale power unimpaired by market manipulation. Moreover, implicit in Commission orders granting market-based rates is a presumption that a company's behavior will not involve fraud, deception or misrepresentation. Companies failing to adhere to such standards are subject to revocation of their market-based rate authority.[10] In addition, the Enron Power Marketers were directed, when they were granted market-based rate authority, to inform the Commission promptly of changes in status that reflect a departure from the characteristics that the Commission relied upon in granting market-based rate authority.[11]

9. The information in Staff's Final Report indicates that the Enron Power Marketers appear to have violated FPA Section 205(a) by engaging in gaming. It also indicates that Enron Power Marketers appear to have acted inconsistently with their market-based

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[1] Enron Power Marketers are authorized to sell power at market-based rates. *See* Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993); Enron Energy Services Power, Inc., 81 FERC ¶ 61,267 (1997).

[2] 16 U.S.C. 824d(a) (2000).

[3] 16 U.S.C. 824e (2000).

[4] 18 CFR 284.402 (2002).

[5] *See* 15 U.S.C. 717 *et seq.* (2000).

[6] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

[7] The Initial Report is available on the Commission's Web site at *http://www.ferc.gov/electric/bulkpower/pa02–2/Initial-Report-PA02–2–000.pdf.*

[8] These proceedings, which are currently pending before the Commission, are Docket Nos. EL02–113–000, EL02–114–000, and EL02–115–000.

[9] Final Report on Price Manipulation in Western Markets (Docket No. PA02–2–000 (Docket No. PA02–2–000 (March 2003). The Staff Final Report is available on the Commission's website. We will incorporate the Staff Final Report, and the underlying record in Docket No. PA02–2–000, by reference into the records in these proceedings.

[10] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,153–54 (2002); *accord* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 at 61,975–77 (2001); GWF Energy, LLC, *et al.*, 98 FERC ¶ 61,330 at 62,390 (2002); New York Independent System Operator, Inc., 91 FERC ¶ 61,218 at 61,798–800 (2000), order *on reh'g*, 97 FERC ¶ 61,155 (2001); Washington Water Power Company, 83 FERC ¶ 61,097 at 61,462–64, *order in response to show cause presentation*, 83 FERC ¶ 61,282 (1998); Kansas City Power & Light Company, 74 FERC ¶ 61,066 at 61,175, *order on reh'g*, 75 FERC ¶ 61,244 (1996).

[11] 65 FERC at 62,405; 81 FERC at 62,319.

rate authority, not only by engaging in gaming, but also by failing to inform the Commission in a timely manner of significant changes in their market shares by gaining influence/control over others' facilities. In view of the foregoing, we are therefore requiring the Enron Power Marketers to show cause why the Commission should not revoke their market-based rate authority. The Commission will institute a Section 206 proceeding and direct Enron Power Marketers to show cause to the Commission in a paper hearing in that proceeding.

10. In cases where, as here, the Commission institutes a Section 206 proceeding on its own motion, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed effective date, in this context the date that we would revoke their market-based rate authorities, at the earliest date allowed,[12] 60 days after publication of the order initiating the Commission's investigation in Docket No. EL03–77–000 in the **Federal Register**. In addition, Section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

B. Proposed Blanket Marketing Certificate Termination

1. *Statutory Origins*

11. The Enron Gas Marketers are affiliates of Transwestern Pipeline Company, Citrus Corp., and/or Northern Plains Natural Gas Company.[13] Section 284.402 of the Commission's regulations grants any person who is not an interstate pipeline a blanket certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to make sales for resale at negotiated rates in interstate commerce of any category of natural gas that is subject to the Commission's NGA jurisdiction.[14] The Commission's NGA sales jurisdiction currently extends to sales for resale of natural gas that are made by pipelines, local distribution companies, and their affiliates.[15] Thus, natural gas marketers who fall into those categories, including the Enron Gas Marketers, require the blanket marketing certificate in order to make sales for resale.

12. The Commission adopted Section 284.402 of its regulations, granting a blanket marketing certificate, in Order No. 547.[16] The purpose of Order No. 547 was to ''foster a truly competitive market for natural gas sales for resale in interstate commerce, giving purchasers of natural gas access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions.''[17] Although the order was independent of Order Nos. 636 and 636–A, it was promulgated for the same reasons, including the promotion of an active and viable spot market for natural gas.[18] The Commission permitted affiliated gas marketers to sell gas at negotiated rates based on a finding that the sale of gas as a commodity would be sufficiently competitive to prevent affiliated gas marketers from exercising market power, that is, controlling prices or excluding competition. NGA Sections 4 and 5 require that jurisdictional gas sales be made at rates that are just and reasonable.[19] The Commission also stated in Order No. 547 that it would monitor the operation of the market.[20]

2. Apparent Manipulation

13. The evidence developed in Staff's investigation indicates that certain Enron Gas Marketers apparently misused their authority under their blanket marketing certificates to make sales to and purchases from gas markets serving California at rates that were unjust and unreasonable from the summer of 2000 through the winter of 2000–2001. This evidence indicates that the Enron Gas Marketers, through their electronic trading platform, EnronOnline (EOL),[21] apparently manipulated the price of natural gas at the Henry Hub located in Louisiana on at least one occasion to profit from positions taken in the over-the-counter (OTC) financial derivatives markets (OTC markets). Although the price change in the physical markets was only about $.10/MMBtu, Enron Gas Marketers nevertheless profited due to the effect that this small change in the physical price had on its large financial position; Enron Gas Marketers earned approximately $3.2 million from this apparent manipulation.

14. On July 19, 2001 a number of traders entered relatively large short positions in the financial markets through OTC swaps and Gas Daily financial swaps. These traders continued to increase the short positions throughout the initial phase of the manipulation, which was the period when the EOL market maker (who was, at times, the desk manager) quickly and steadily raised prices on EOL, resulting in the purchase of a very large amount of next-day physical gas. This purchasing caused prices in the financial markets to rise, but by a lesser amount.

15. The financial traders stopped increasing their short positions near the end of the EOL market maker's buying streak, at a point when the EOL market maker stopped raising prices and began to hold prices steady at the high levels. Once the EOL market maker leveled out prices, the OTC swap began to fall. The EOL market maker then began to lower the prices and sold a very large amount of gas at rapidly falling prices. The falling of the physical price then further pushed down the OTC swap price, generating significant profits for the financial traders. These profits greatly exceeded the losses that were generated from the impatient buying and selling of the physical gas.

[12] *See, e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

[13] On March 19, 2003, Enron Corp. made a Form 8–K filing with the Securities and Exchange Commission, under file number 1–13159, proposing to place ownership of Transwestern Pipeline Company, Citrus Corp., and Northern Plains Natural Gas Company with a newly created company called PipeCo.

[14] 18 CFR 284.402 (2002). Affiliates of pipelines are not engaged in first sales, *see* 15 U.S.C. 3301(21) (2000), and, so, are subject to the Commission's jurisdiction.

[15] The NGA gives the Commission jurisdiction over sales for resale of natural gas in interstate commerce. However, this jurisdiction has been limited by Sections 601(a)(1)(A) and (b)(1)(A) of the Natural Gas Policy Act as amended by the Natural Gas Wellhead Decontrol Act (NGPA), which remove all ''first sales'' from the Commission's NGA jurisdiction as of January 1, 1993. NGPA Section 2(21) defines first sales to include all sales other than sales by interstate or intrastate pipelines, local distributions companies, and their affiliates. Reporting of Natural Gas Sales to the California Market, 96 FERC ¶ 61,119 at 61,463, *order on reh'g*, 97 FERC ¶ 61,029 (2001); San Diego Gas and Electric Co., 101 FERC ¶ 61,161 at 61,656 (2002).

[16] Regulations Governing Blanket Marketer Sales Certificates, Order No 547, FERC Stats. & Regs., Regulations Preambles January 1991—June 1996 ¶ 30,957 (1992), *order on reh'g*, 62 FERC ¶ 61,239 (1993).

[17] *Id.* at 30,719.

[18] *Id.* at 30,721.

[19] *Id.* at 30,726; *see* 15 U.S.C. 717c, 717d (2000).

[20] Id. at 30,727.

[21] The EnronOnline system is administered by Enron Networks, an Enron Corp. subsidiary. EnronOnline is a free, Internet-based, transaction system which allows the Enron Gas Marketers to buy from and sell gas to third parties.

3. Commission Determination

16. The Commission granted a blanket marketing certificate after a finding that the gas commodity market was sufficiently competitive to prevent certificate holders from manipulating prices. The Commission now has evidence that certain Enron Gas Marketers have apparently participated in practices that manipulate prices so as to charge unjust and unreasonable rates.

17. The Commission has discretion to implement remedies when it finds conduct that has violated its policies or regulations. The agency is at its zenith in fashioning such remedies.[22] Its discretion extends to denial of participation in a government program generally extended to business managers for the purpose of maintaining the fairness, equity, and efficiency of the program.[23] Given the Enron Gas Marketers' conduct and their adverse effects on gas prices, the Enron Gas Marketers are directed to show cause why it still serves the public convenience and necessity for the Enron Gas Marketers to have blanket marketing certificates and why the Commission should not terminate their blanket marketing certificates. The Commission will institute a proceeding pursuant to the Commission's authority under NGA Sections 5 and 7,[24] and direct the Enron Gas Marketers to show cause to the Commission in a paper hearing in that proceeding

The Commission orders:

(A) The Enron Power Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–77–000, why they should not be found to have violated Section 205(a) of the Federal Power Act and their market-based rate authorizations and why their market-based rate authority should no be revoked.

(B) The effective date in Docket No. EL03–77–000 will be 60 days following publication of this order in the **Federal Register**.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the department of Energy Organization Act and the Federal Power Act, particularly Section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes an investigation of the Enron Power Marketers' market-based rates, in Docket No. EL03–77–000, as discussed in the body of this order.

(D) The Enron Gas Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. RP03–311–000, why the Commission should not terminate its blanket marketing certificate under 18 CFR 284.402 (2002), as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Natural Gas Act, particularly Sections 5 and 7 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes an investigation of the Enron Gas Marketers' blanket marketing certificates, in Docket No. RP03–311–000, as discussed in the body of this order.

(F) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date of this order.

(G) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (A) and (D) above may be submitted within 15 days of the date of filing of the show cause submissions.

(H) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7796 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

[22] *E.g., Niagara Mohawk Power Corp.* v. *FPC,* 379 F.2d 153, 159 (DC Cir. 1967). *See also Connecticut Valley Electric Company, Inc.* v. *FERC,* 208 F.3d 1037, 1044 (DC Cir. 2000); *Louisiana Public Service Commission* v. *FERC,* 174 F.3d 218, 225 (DC Cir. 1999).

[23] *Niagara Mohawk Power Corp.* v. *FPC,* 379 F.2d 153, 159 (DC Cir. 1967).

[24] 15 U.S.C. 717d, 717f (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–008 and RP01–44–010]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

March 25, 2003.

Take notice that on March 19, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2002:

Sub. Seventh Revised Sheet No. 46
Sub. Ninth Revised Sheet No. 47

Iroquois asserts that the purpose of this filing is to insert inadvertently omitted language which should have been included when these sheets were submitted as part of the December 2, 2002, compliance filing.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7774 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–500–000]

Liberty Power Corp., Inc.; Notice of Issuance of Order

March 25, 2003.

Liberty Power Corp., Inc. (Liberty Power) filed a market based-rate application, with accompanying tariff. The proposed rate tariff provides for the sale of capacity and energy at market-based rates. Liberty Power also requested waiver of various Commission regulations. In particular, Liberty Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Liberty Power.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request 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 Liberty Power 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, Liberty Power 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 Liberty Power, 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 Liberty Power's issuances of securities or assumptions of liability.

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 Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7770 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–309–000]

Natural Gas Pipeline Company of America; Notice of Reconciliation Report

March 25, 2003.

Take notice that on March 21, 2003, Natural Gas Pipeline Company of America (Natural) filed its Final Reconciliation Report on Account No. 858.

Natural states that copies of the filing are being mailed to all of its customers, interested state commissions and all parties in Docket No. RP03–257.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7776 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–320–000, ER03–320–001, ER03–320–002, ER03–321–000, ER03–321–001, ER03–321–002, ER03–322–000, ER03–322–001, and ER03–322–002]

NM Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC; Notice of Issuance of Order

March 25, 2003.

NM Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC (together, ''Applicants'') filed a petition for acceptance of initial tariffs for each Applicant, waivers and blanket authority. The petition requests the Commission authorize the Applicants to engage in wholesale sales of electric power, energy and certain ancillary services, and for the reassignment and resale of firm transmission rights. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request 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 the Applicants 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, the

Applicants are 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 Applicants, 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 the Applicants' issuances of securities or assumptions of liability.

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 Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7769 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–95–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 25, 2003.

Take notice that on March 20, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 6, with an effective date of January 1, 2003.

GTN states that the filing is being made to reflect in its tariff the incremental fuel surcharge that was approved by Commission order issued March 4, 2003 in Docket No. RP02–331–002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7777 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–59–000 and EL03–60–000]

Order Proposing Revocation of Market-Based Rate Authority

Issued March 26, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Reliant Energy Services, Inc., BP Energy Company.

1. This order directs Reliant Energy Services, Inc. (Reliant) and BP Energy Company (BP Energy) to show cause to the Commission in paper hearings why their authority to sell power at market-based rates [1] should not be revoked by the Commission in light of their apparent manipulation of electricity prices at the Palo Verde, Arizona trading hub, in violation of section 205(a) of the Federal Power Act's (FPA) requirement that rates be just and reasonable.[2] This order also initiates proceedings under section 206 of the FPA,[3] in Docket Nos. EL03–59–000 (for Reliant) and EL03–60–000 (for BP Energy), where the show cause filings will be considered.

2. This order is necessary to fulfill the Commission's obligation to monitor competitive markets in order to protect wholesale electricity customers from unjust and unreasonable rates.

Background

3. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.[4]

4. On August 13, 2002, Staff released its Initial Report in Docket No. PA02–2–000.[5] In that Report, Staff recommended the initiation of various company-specific proceedings [6] to further investigate possible misconduct, and recommended several generic changes to market-based tariffs to prohibit the deliberate submission of false information or the deliberate omission of material information and to provide for the imposition of both refunds and penalties for violations.

5. In Staff's Final Report, being publicly released concurrently with this order,[7] Staff notes evidence that indicates that Reliant and BP Energy appear to have engaged in coordinated efforts to manipulate electricity prices.

6. Specifically, Staff points to three occasions where a BP Energy trader called a Reliant trader and asked him to buy power from an offer he was going

[1] Reliant and BP Energy are power marketers previously authorized to sell electric power at market-based rates. *See* Office Director Letter Orders issued on July 25, 1994 in Docket No. ER94–1247–000 and March 12, 1999 in Docket No. ER99–1801–000 (granting Reliant market-based rate authority); Office Director Letter Orders issued on June 17, 1999 in Docket No. ER99–2895–000 and October 18, 2000 in Docket No. ER00–3614–000 (granting BP Energy market-based rate authority).

[2] 16 U.S.C. 824d(a) (2000).

[3] 16 U.S.C. 824e (2000).

[4] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

[5] The Initial Report is available on the Commission's Web site at *http://www.ferc.gov/electric/bulkpower/pa02–2/Initial-Report-PA02–2–000.pdf.*

[6] These proceedings, which are currently pending before the Commission, are Docket Nos. EL02–113–000, EL02–114–000, and EL02–115–000.

[7] Final Report on Price Manipulation in Western Markets (Docket No. PA02–2–000 March 2003). The Staff Final Report is available on the Commission's website. We will incorporate the Staff Final report, and the underlying record in Docket No. PA02–2–000, by reference into the records in these proceedings.

to place on an electronic trading platform (Bloomberg). The Reliant trader would then sell the power back to the BP Energy trader at the same price, but the transaction would not take place on the electronic trading platform.

7. On one of the occasions the BP Energy trader with the aid of Reliant's trader appears to have manipulated the price of electricity delivered at Palo Verde, a trading hub in Arizona to affect the value of his trading position (such that a higher price raises the value of the trader's portfolio).

8. Recorded telephone conversations and transcripts provided to Staff by Reliant in Docket No. PA02–2–000 document the manipulation.[8] The BP trader contacted the Reliant trader and offered a transaction. The BP trader would offer to sell electricity on the Bloomberg electronic platform, the Reliant trader would buy at the posted price, and the BP trader would then buy back the power (off the Bloomberg electronic platform) at the same price to undo the sale. The BP trader goes on to explain that he is trying to move the market price up to $43.10 but no one will buy it at that price, so he needs the Reliant trader to ''lift his offer''[9] in order to increase the price.

9. Several days later the same BP trader contacted the same Reliant trader and offered a similar proposal, again, apparently to manipulate the price in order to increase the value of his trading position under the company's mark-to-market accounting.

10. The BP trader goes on to explain that they are marking their books on the October Palo Verde price. He notes that power for delivery in October at Palo Verde had traded as high as $44, and he wants to move the price even higher because of his long position. He indicates that he will post an offer to sell at $44.15 and asks the Reliant trader to lift that offer and then he will buy it back from him at the same price. The BP trader then posts the offer on the Bloomberg electronic platform. Shortly thereafter, the BP trader asks the Reliant trader to lift the offer because he senses the market beginning to move. The Reliant trader lifts the offer and asks the BP trader what they should do next. The evidence indicates that the BP trader informed the Reliant trader that he will buy the power back at the same price.

Discussion

11. We find that BP Energy and Reliant, in the transactions identified above, appear to have manipulated electricity prices at Palo Verde, an important trading hub.[10]

12. The Commission's grant of authority to sell power at market-based rates, as opposed to at cost-based rates, depends on a functioning, competitive market for wholesale power unimpaired by market manipulation. Moreover, implicit in Commission orders granting market-based rates is a presumption that a company's behavior will not involve fraud or deception. Companies failing to adhere to such standards are subject to revocation of their market-based rate authority.[11]

13. The information in Staff's Final Report indicates that BP Energy and Reliant appear to have violated FPA section 205(a)'s requirement that rates be just and reasonable by manipulating the electricity prices at Palo Verde.[12] In view of the foregoing, we are therefore requiring Reliant and BP Energy to show cause to the Commission in a paper hearing why the Commission should not revoke their market-based rate authority. The Commission will institute FPA section 206 proceedings and direct BP Energy and Reliant to show cause in those proceedings why their market-based rate authorizations should not be revoked.

14. In cases where, as here, the Commission institutes section 206 proceedings on its own motion, section 206(b) requires that the Commission establish effective dates that are no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed effective dates, in this context the dates that we would revoke their market-based rate authorities, at the earliest date allowed,[13] 60 days after publication of the order initiating the Commission's investigations in Docket Nos. EL03–59–000 and EL03–60–000 in the **Federal Register**. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

The Commission orders:

(A) Reliant is hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–59–000, why it should not be found to have violated section 205 of the FPA and why its market-based rate authority should not be revoked.

(B) BP Energy is hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–60–000, why it should not be found to have violated section 205 of the FPA and why its market-based rate authority should not be revoked.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

(D) The effective dates in Docket Nos. EL03–59–000 and EL03–60–000 will be 60 days following publication in the **Federal Register** of the order discussed in Ordering Paragraph (C) above.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes investigations of BP Energy's and Reliant's market-based rates, in Docket Nos. EL03–59–000 and EL03–60–000,

[8] The conversations and transcripts are non-public. They will be made available to parties subject to an appropriate protective order.

The Staff's Final Report indicates that when Staff asked BP Energy for information and telephone transcripts containing other information concerning these events, BP Energy stated simply that it had no information regarding the activity of its trader because it did not keep telephone records.

[9] *I.e.*, to buy at the price posted on the Bloomberg electronic platform.

[10] The Palo Verde trading hub previously was presumed to be liquid and not subject to price manipulation. The transactions identified and discussed above suggest that that presumption is not true. In addition, although electricity price indices are not as critical a part of the market price formation process in the electric industry as natural gas price indices are in the natural gas industry, they were nevertheless considered by many to be an important part of electricity market price discovery.

[11] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,153–54 (2002); *accord* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 at 61,975–77 (2001); GWF Energy, LLC, *et al.*, 98 FERC ¶ 61,330 at 62,390 (2002); New York Independent System Operator, Inc., 91 FERC ¶ 61,218 at 61,798–800 (2000), *order on reh'g*, 97 FERC ¶ 61,155 (2001); Washington Water Power Company, 83 FERC ¶ 61,097 at 61,462–64, *order in response to show cause presentation*, 83 FERC ¶ 61,282 (1998); Kansas City Power & Light Company, 74 FERC ¶ 61,066 at 61,175, *order on reh'g*, 75 FERC ¶ 61,244 (1996).

[12] Further context is provided in the Staff's Final Report.

[13] *See e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

respectively, as discussed in the body of this order.

(F) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date of this order.

(G) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (A) and (B) above may be submitted within 15 days of the date of filing of the show cause submissions.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7797 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–005]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

March 25, 2003.

Take notice that on March 12, 2003, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing a refund report to comply with Article 2.4 of the Stipulation and Agreement approved by the Commission on December 24, 2002.[1]

Stingray states that on September 19, 2002, it filed a stipulation and agreement (Settlement) to resolve all issues pending in this proceeding. By letter order dated December 24, 2002, the Commission approved the settlement and directed Stingray to notify the Commission within 30 days after making a lump-sum payment in the amount of $4.5 million to the Indicated Shippers. As directed by the Commission, Stingray is submitting the statement of compliance with the Commission as notification that such payment has been forwarded to the Indicated Shippers.

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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7778 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Docket No. RP99–166–000, 101 FERC · 61,365 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12020–000]

Marseilles Hydro Power, LLC, Illinois; Notice of Availability of Environmental Assessment

March 25, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for major license for the proposed Marseilles Hydroelectric Project located in the town of Marseilles, on the Illinois River in La Salle County, Illinois, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12020–000 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Steve Kartalia at (202) 502–6131 or by E-mail at stephen.kartalia@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7771 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

March 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12452–000.

c. *Date filed:* March 3, 2003.

d. *Applicant:* United Power Corporation.

e. *Name and Location of Project:* The Bryant Mountain Pumped Storage Hydroelectric Project would use flows from the U.S. Bureau of Reclamation's D and J Canals and would be built on federal lands administered by the U.S. Bureau of Land Management in Klamath County, Oregon. No tribal lands would be involved.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Bart M. O'Keeffe, United Power Corporation, P.O. Box 1916, Byron, CA 94514, (925) 634–1550.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed pumped storage project would consist of: (1) An upper reservoir, an enlargement of the existing Pope Reservoir, with a surface area of 550 acres and a storage capacity of 60,000 acre-feet at a water surface elevation of 5,500 feet msl, (2) a 4,000-foot-long, 310-foot-high earthen upper dam, (3) a 1,500-foot-long, 30-foot-diameter concrete low pressure tunnel, (4) a 270-foot-deep, 30-foot-diameter concrete surge shaft, (5) a 1,100-foot-long, 30-foot diameter vertical concrete power shaft, (6) a 3,800-foot-long, 24-foot-diameter concrete power tunnel, (7) a powerhouse containing four reversible generating units with a total installed capacity of 1,000 megawatts, (8) a lower reservoir with a surface area of 1,480 acres and a storage capacity of 110,000 acre-feet at a water surface elevation of 4,220 feet msl, (9) a 21,500-foot-long, 135-foot-high earthen lower dam, (10) a 4-mile-long, 500-kilovolt transmission line, and (11) appurtenant facilities.

Water for the project would be obtained from the D canal by an intake and pumping plant to be located 1.5 miles east of the town of Malin and a 5,700-foot-long, 36-inch-diameter pipeline to the lower reservoir, and from the J canal by an intake and pumping plant to be located one mile south of Malin and a 17,000-foot-long, 36-inch-diameter pipeline to the lower reservoir. The D and J canals convey water diverted from the Lost River in southern Oregon for irrigation. The applicant proposes to fill the project reservoirs when the canals are not being used to capacity for irrigation.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''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 an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. The Commission strongly encourages electronic filings.

r. *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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7772 Filed 3–31–03; 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

March 25, 2003.

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).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Prohibited

Docket No., Date Filed, Presenter/Requester

1. Project No. 1354–000, 3–11–03 Hon. Ron W. Goode

Exempt

Docket No., Date Filed, Presenter, or Requester

1. Project No. 719–000, 3–10–03, Reid Brown
2. Project No. 184–000, 3–10–03, Sharon Waechter
3. Project No. 2090–000, 3–10–03, Janet Hutzel
5. CP02–434–000, 3–10–03, Peter Nauth
6. CP02–434–000, 3–18–03, David Swearingen
7. CP02–90–000, 3–11–03, James Martin
8. Project No. 516–000, 3–13–03, Patti Leppert
9. Project No. 2042–013, 3–19–03, Jeff Selle

Magalie R. Salas,

Secretary.

[FR Doc. 03–7773 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CA090–NOA; FRL–7475–6]

Official Release of EMFAC2002 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the latest version of the California EMFAC model for use in state implementation plan (SIP) development in California. EMFAC2002 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. EMFAC2002 calculates air pollution emission factors for passenger cars, trucks and buses. The new model is based on new and improved data and is also a more user-friendly version of the model, allowing agencies to update assumptions and run multiple scenarios for emissions analyses. Today's notice also starts a time period before EMFAC2002 is required to be used statewide in all new transportation conformity analyses in California. Since the EMFAC model is only used in California, EPA's approval of the model does not affect MOBILE model users in other states.

DATES: This determination is effective April 1, 2003. See below for further information regarding how today's approval starts a time period after which EMFAC2002 is required in new transportation conformity analyses.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, oconnor.karina@epa.gov, (775) 833–1276, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2002 model are available on the California Air Resources Board (CARB) Web site: *http://www.arb.ca.gov/planning/emfac2002/emfac2002.htm* (transmittal and links to support documents) and *http://www.arb.ca.gov/msei/on-road/latest_version.htm* (model, technical support documents, etc.).

I. Background

A. What Is the EMFAC Model?

The EMFAC model (short for EMission FACtor) is a computer model that can estimate emission rates for motor vehicles for calendar years from 1970 to 2040 operating in California. Pollutant emissions for hydrocarbons, carbon monoxide, nitrogen oxides, particulate matter, lead, sulfur oxides, and carbon dioxide are output from the model. Emissions are calculated for passenger cars, eight different classes of trucks, motorcycles, urban diesel and school busses and motor homes. The EMFAC2002 model is operated with a user-friendly graphical user interface (GUI) which facilitates data input and allows the development of alternative emissions scenarios through a What If Scenarios (WIS) generator. The WIS interface can be used to incorporate updated vehicle data, adjust ambient conditions or make changes to potential emission control programs in a specific area.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, county, air district, air basin, or air basin within county level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emission inventory in tons/day for a specific day, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel and speeds. Thus the model can be used to make decisions about air pollution policies and programs at the local or state level. Inventories based on EMFAC are also used to meet the federal CAA's state

implementation plan (SIP) and transportation conformity requirements.

B. What Versions of EMFAC Are Currently in Use in California?

Most SIPs in California were developed using the vehicle emission models EMFAC7F (released by CARB September 1993) or EMFAC7G (released by CARB July 1997). EPA approved use of EMFAC7F in May 1994 and then EMFAC7G in April 1998. EMFAC7G was considered a minor update to EMFAC (similar to MOBILE5b as a minor update to MOBILE5a), thus areas with SIP motor vehicle emissions budgets developed using EMFAC7F were allowed to continue to use EMFAC7F for conformity. EMFAC7G included updated data on control measures (*e.g.* inspection and maintenance and truck standards), updated vehicle information (*e.g.* vehicle population and starts/vehicle/day) and vehicle activity data (*e.g.* vehicle miles per day and vehicle miles per speed distribution). Areas with SIP budgets developed using EMFAC7G were required to use EMFAC7G for regional conformity analyses.

Since the release of EMFAC7G, CARB has made several interim updates to EMFAC, EMFAC2000 and EMFAC2001. Of these models, only EMFAC2000 was submitted to EPA for approval and used in development of a SIP. Like EMFAC7G, EMFAC2000 included updated data on control measures (*e.g.*, cleaner fuels, new vehicle standards for motorcycles, buses, and heavy-duty trucks), updated vehicle information (*e.g.*, vehicle population, starts/vehicle/day) and updated vehicle activity data (*e.g.*, vehicle miles per day, vehicle miles per speed distribution, and mileage accrual rates). In January 2002, EPA approved EMFAC2000 (67 FR 1464, January 11, 2002) for use only in the San Francisco Bay Area (Bay Area), for estimation of ozone precursor emission factors. EPA's approval of EMFAC2000 was limited because: (1) EMFAC2000 was an improvement on existing available models despite certain technical limitations; and (2) CARB has committed to revise the Bay Area ozone attainment SIP's motor vehicle emissions budgets with EMFAC2001 or a successor model as part of its mid-course review SIP revision in April 2004.

C. Why Have Transportation Agencies Stopped Using EMFAC7F and EMFAC7G for Regional Conformity Emissions Analyses?

On May 2, 2002, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) sent a letter to CARB indicating that, after December 31, 2002, they would not continue to make conformity determinations that require a new regional emissions analysis, unless the analysis incorporates more recent vehicle data. The letter indicated that vehicle data embedded in the EMFAC7F and EMFAC7G versions of the EMFAC emission factor model were about ten years old. Consistent with the U.S. DOT/EPA January 18, 2001, guidance on latest planning assumptions, new vehicle registration data must be used when it is available for conformity purposes. Since newer vehicle data was available but was not included in the older versions of EMFAC, EMFAC7F and EMFAC7G have not been used in any new regional emissions analyses since December 31, 2002.

D. Why Is EPA Announcing Its Approval of the EMFAC Model?

CAA section 172(c)(3) and 40 CFR 51.112(a)(1) require that SIP inventories be based on the most current and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) requires that the latest emissions estimates be used in conformity analyses. EPA approves models that fulfill these requirements.

Under 40 CFR 93.111(a), EPA must approve new versions of EMFAC for SIP purposes before they can be used in conformity analyses. In a December 20, 2002 letter, CARB requested that EPA approve EMFAC2002 for use in developing SIPs and in determining conformity of transportation plans in California. EMFAC2002 is a significant change from previous EMFAC models and is capable of calculating motor vehicle emissions for all California areas. EMFAC2002 is being approved as the latest emissions model for statewide use in SIP development (rather than as an interim update to the EMFAC model as EMFAC7G was an interim update to EMFAC7F). Since the EMFAC model is only used in California, EPA's statewide approval of the model does not affect MOBILE emissions factor model users in other states.

II. EPA Action

A. What Version of EMFAC Is EPA Approving?

In this notice, EPA is approving and announcing that EMFAC2002 is available to use in statewide California SIP development. EMFAC2002 was developed by CARB and transmitted for approval to EPA on December 20, 2002.

On January 28, 2003, CARB also transmitted a methodology to adjust vehicle activity data used by EMFAC2002 when updated data is available. Since the transportation conformity rule (40 CFR 93.110) requires areas to use the latest information for estimating vehicle activity, we are also approving the CARB methodology for updating vehicle activity data in EMFAC2002.

CARB's methodology, ''Recommended Methods for Use of EMFAC2002 to Develop Motor Vehicle Emission Budgets and Assess Conformity,'' explains how vehicle activity data should be updated. The methodology explains how each parameter associated with vehicle activity was originally developed in EMFAC, how each parameter is related, and how each can be updated when new data becomes available. These relationships are important when adjusting vehicle trips or VMT. For example, VMT in EMFAC2002 is directly related to vehicle population [1] and mileage accrual rate. Similarly, start and evaporative vehicle emissions are also related to vehicle population levels. If new VMT data is available, CARB suggests modifying the input vehicle population levels, instead of directly inputting new VMT data so that start and evaporative emissions are revised appropriately. Updated vehicle activity data (vehicle miles traveled) can also be input to EMFAC using the WIS interface. As CARB states, local circumstances may alternatively support adjustment of mileage accrual rates, subject to the interagency consultation process. In addition, CARB intends to periodically update vehicle population information, including vehicle classes by model year, in EMFAC2002.

B. What Pollutants Can EMFAC2002 Estimate?

EPA is approving the model to estimate regional emissions of hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), particulate matter (PM), lead, sulfur oxides and carbon dioxide. However, EMFAC2002 will only be used in transportation conformity for pollutants and precursors that affect transportation emissions and are identified in air quality plans as significant. Transportation-related pollutants and precursors that are currently covered by the conformity rule are HC, NO_X, CO, and PM–10. EPA is also approving EMFAC2002 to estimate hotspot emissions for carbon monoxide.

[1] Vehicle population includes vehicle type (class) and age distribution.

C. Why Does EPA Consider EMFAC2002 as a Major Update to EMFAC?

EMFAC2002 includes significant changes to its model interface, new data and methodologies regarding calculation of vehicle emissions, revisions to implementation data for control measures, and corrections to technical errors mentioned in our prior approval of EMFAC2000. The new WIS interface makes EMFAC2002 both more user friendly and allows users to change input data updated for factors that had previously been embedded within the model (*e.g.* fleet vehicle data). EMFAC2002 includes updated data estimating idle emissions from heavy duty trucks and school buses. Base emission rates for light-duty vehicles are now drawn from the real-world unified drive cycle. EMFAC2002 accounts for gross evaporative emissions (*i.e.*, ''liquid leakers'') and updates particulate emissions to account for smoking vehicles. The model also accounts for recent amendments to California's low emissions vehicle and fuels regulations, as well as updated heavy-duty truck standards. Full chassis dynamometer tests, rather than engine dynamometer tests, are now the source of heavy-duty truck emissions factors. CARB's web site describes these and other model changes at *http://www.arb.ca.gov/planning/emfac2002/encl_a.pdf.*

D. How Were Stakeholders and the Public Involved in the EMFAC Development Process?

Since 1999, CARB has held a series of public workshops to discuss proposed model updates and receive comments on interim versions of the new model. In the most recent workshops, held June 11 and 13, 2002, CARB described the latest EMFAC changes under consideration and sought public input. Those changes are reflected in the final EMFAC2002 model released in October 2002. Two additional public information briefings were held on November 6 and 7, 2002, to share the emissions estimates resulting from use of the final model with updated travel activity, as well as plans for transmittal of EMFAC2002 to U.S. EPA. CARB has also discussed both the model and the activity update methodology with affected transportation and air agencies as part of the interagency consultation process.

CARB also released a series of technical memos, that describe each update to the model, and a public information document that summarizes the changes from earlier versions of the model. The technical memos are available on CARB's Web site at: *http://www.arb.ca.gov/msei/on-road/latest_revisions.htm.* Each memo describes the model update, the reason for the change, how the change was incorporated into the EMFAC model, and the resulting emissions impact. The public information document is also available on the CARB Web site at: *http://www.arb.ca.gov/msei/on-road/briefs/2002.pdf.* This document summarizes the major changes to the EMFAC model and contains tables showing the impacts of the changes both statewide and by county for VOC, CO, NO_X and PM. The detailed description of all major model updates since EMFAC7F is an enclosure to the transmittal package and available on the CARB Web site at: *http://www.arb.ca.gov/planning/emfac2002/encl_a.pdf.*

E. Will a Transportation Conformity Grace Period Be Set by This Approval?

Yes. The transportation conformity rule (40 CFR 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that ''* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates* * *.'' When we approve a new emissions model such as EMFAC2002, a grace period is established before the model is required for conformity analyses. However, areas have the option of using the new model prior to the end of the grace period. The conformity rule provides for a grace period for new emissions models of between 3 to 24 months.

In consultation with the DOT, EPA considers many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

Upon consideration of all of these factors, EPA is establishing a 3-month grace period before EMFAC2002 is required for new conformity analyses. The grace period begins today and ends on June 30, 2003. As discussed earlier in the notice, several prior versions of EMFAC (EMFAC7F, EMFAC7G) are no longer used in California for new regional emissions analyses for transportation plan and transportation improvement program (TIP) conformity determinations. Therefore it is appropriate to set a short grace period since all areas in California will need to use EMFAC2002 to begin any new regional conformity analyses. A longer grace period would provide no practical benefit for transportation plan and TIP conformity determinations, since older EMFAC models cannot be used in new regional analyses.

When the grace period ends on June 30, 2003, EMFAC2002 will become the only approved motor vehicle emissions model for new regional and hot-spot transportation conformity analyses across California. In general, this means that all new VOC, NO_X, PM–10, and CO regional conformity analyses and CO hot-spot analyses started after the end of the 3-month grace period must be based on EMFAC2002, even if the SIP is based on an earlier version of the EMFAC model.

F. Can Areas Use Any Other Models During the Grace Period?

Yes, in limited cases. The only area in California with motor vehicle emission budgets developed with EMFAC2000 and approved to use EMFAC2000 is the Bay Area. During the grace period, the Bay Area can continue to use EMFAC2000 for regional analyses for ozone precursors or choose to use EMFAC2002 on a shorter time frame. DOT's May 2, 2002 memo did not preclude the continuing use of EMFAC2000 for use in new regional conformity determinations. In addition, the Bay Area could proceed with transportation plan and TIP conformity analyses for ozone precursors based on EMFAC2000 if the analysis was begun before or during the grace period. (40 CFR 93.111(c))

Conformity determinations for transportation projects can also be based on EMFAC7F if the analysis was begun before the end of the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (*see* 40 CFR 93.111(c)). The interagency consultation process should be used if it is unclear whether an EMFAC7F or EMFAC7G based analysis was begun before the end of the grace period.

G. Related SIP Development Actions

The Bay Area 2001 ozone SIP included a commitment from CARB to revise the SIP with the latest technical information as part of its mid-course review in April 2004. This commitment was referenced in EPA's approval of EMFAC2000 (67 FR 1464, January 11, 2002), with the understanding that CARB would submit revisions to the EMFAC model (*e.g.*, EMFAC2002) in early 2003, so that the Bay Area SIP revision would occur within one year of EPA's approval of EMFAC2002. This is

consistent with EPA's past practice where an older version of the MOBILE model has been used prior to the release of a newer version that includes technical corrections in emission estimates. We understand that the Bay Area has begun work on the plan revision, that the EMFAC2002 model will be used in development of the motor vehicle emission inventories in the plan and that the SIP should be submitted to EPA by the April 2004 deadline.

In addition, on June 14, 2002, CARB submitted a letter indicating the State's intention to submit comprehensive revisions to the progress, attainment, and maintenance SIPs and the budgets for most areas in California. These SIP revisions, would reflect, among other new information, the State's revised motor vehicle emissions factors using EMFAC2002 and updated information on vehicle fleet, age distribution, and activity levels (letter from Michael P. Kenny, CARB, to Wayne Nastri, EPA). In this letter, CARB acknowledged that the previously approved budgets had become outdated and made clear its intention to update these budgets as part of a comprehensive update to the plans. CARB also requested that EPA limit the duration of its prior approvals of the emission budgets.

In response, on July 16, 2002 (67 FR 46618), EPA proposed to limit our approvals of the existing SIP budgets to last only until the effective date of our adequacy finding for new budgets that replace the existing approved budgets for the same pollutant, CAA requirement, and year. That proposal was finalized on November 15, 2002 (67 FR 69139), limiting our prior approvals of the emission budgets. Normally, new budgets that replace existing budgets in approved plans cannot be used until the corresponding plans have been fully approved as part of the SIP (see 40 CFR 93.118(e)). However, since approval of the existing budgets now expires when we determine that the new budgets are adequate, the updated budgets can be employed in transportation conformity determinations within a few months of their submission, rather than only when the SIP is finally approved, which could take as long as 18 months.

Consistent with the June 2002 letter, CARB has already begun submitting revised SIPs. Ozone maintenance plans, new and revised, have already been submitted for San Diego and Santa Barbara. A revised statewide CO maintenance plan and revised regional air quality plans for San Joaquin Valley, South Coast, Coachella Valley, and Ventura County are also expected within the next year. Motor vehicle emission budgets from all of these plans would go into effect upon determination of a positive adequacy finding, rather than after a full plan approval and be available for conformity analyses using EMFAC2002.

H. Summary of EPA Actions

EPA is approving EMFAC2002 as submitted by CARB on December 20, 2002 with the following limitations and conditions.

(1) The approval is limited to California.

(2) The approval is Statewide and applies to estimation of hydrocarbon, carbon monoxide, nitrogen oxides, and particulate matter emissions, lead, sulfur oxides and carbon dioxide. However, EMFAC2002 will only be used in transportation conformity for pollutants and precursors that affect transportation emissions and are identified in air quality plans as significant. EPA is also approving EMFAC2002 to estimate hotspot emissions for carbon monoxide.

(3) A 3-month statewide conformity grace period will be established beginning April 1, 2003 and ends June 30, 2003.

Dated: March 20, 2003.

Wayne Nastri,

Regional Administrator, EPA Region IX.

[FR Doc. 03–7815 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7475–3]

EPA National Advisory Council for Environmental Policy and Technology; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA) .

ACTION: Notice; notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Thursday, April 17, 2003, from 10 a.m. to 12 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background

NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing.

Purpose of Meeting

The NACEPT Council will review and discuss the EPA's draft FY 2003–2008 Strategic Plan. The draft Strategic Plan is built around five goals, centered on the themes of air, water, land, communities and ecosystems, and compliance and environmental stewardship. EPA is currently soliciting public comments on the draft strategic plan. This meeting will provide the full NACEPT Council the opportunity to make recommendations on EPA's draft strategic plan.

Availability of Review Materials

EPA's Draft FY 2003–2008 Draft Strategic Plan is available electronically from EPA's Office of Chief Financial Officer, at *http://epa.gov/ocfo/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Gwen Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0090 or via email at *whitt.gwen@epa.gov.* You may also contact Sonia Altieri at (202) 233–0090 if you have any questions. The agenda will be available to the public upon request. General comments from the public on the draft strategic plan should be sent to *http://epa.gov/ocfo/plan/plan.htm.* Specific comments for NACEPT's consideration should be submitted no later than Monday April 21, 2003.

General Information

Additional information concerning the National Advisory Council for

Environmental Policy and Technology (NACEPT) can be found on our website *(http://www.epa.gov/ocem).*

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 24, 2003.

Gwen Whitt,

Designated Federal Officer.

[FR Doc. 03–7798 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7475–4]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition dated March 27, 2002 was received from the State of New Jersey requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Barnegat Bay, Ocean County, New Jersey. This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Barnegat Bay Estuary Program, New Jersey Marine Sciences Consortium, Ocean County Planning Board and Ocean County Vacation and Technical School. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Barnegat Bay Complex in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Barnegat Bay is a shallow, lagoon-type estuary characteristic of a back bay system of a barrier island coastline. Barnegat Bay is bordered by two barrier islands, Island Beach and Long Beach Island. These islands are approximately 64 km in total length, are oriented north-south and separate the bay from the Atlantic Ocean. The No Discharge Zone (NDZ) will include Barnegat Bay Complex and its navigable tributaries. The boundary lines have been defined for the Point Pleasant Canal, Barnegat Inlet and Egg Harbor Inlet as lines between the following points:

Point Pleasant Canal—
40 04.030 N, 74 03.281 W;
40 04.068 N, 74 03.278 W

Barnegat Inlet—
Inside South Bouy, 39 45.457 N, 74 05.519 W;
Inside North Bouy, 39 45.525 N, 74 05.519 W

Egg Harbor Inlet—
39 30.521 N, 74 18.389 W;
39 30.476 N, 74 17.322 W

Barnegat Bay provides recreational, economic, and aesthetic benefits to the coastal users of New Jersey. The estuary is productive for shellfish harvesting, recreational activities such as fishing, kayaking, swimming and boating. The bay supports hard clam harvest and blue crab landings. NJDEP Bureau of Marine Water Classification and Analysis has divided the State into 36 Shellfish growing water reaches. The bay complex is identified as Reaches 7 through 13 which are as follows:

Reach 7—Barnegat Bay (Bay Head to Seaweed Point)
Reach 8—Barnegat Bay (Seaweed Point to Mathis Bridge)
Reach 9—Toms River
Reach 10—Barnegat Bay (Mathis Bridge to Forked River)
Reach 11—Barnegat Bay (Forked River to Main Point)
Reach 12—Manahawkin/Little Egg Harbor Bay (Main Point to Long Point)
Reach 13—Long Point to Beach Haven Inlet

Information submitted by the State of New Jersey indicate that there are sixty-six existing pumpout facilities and two pumpout boats available to service vessels throughout the Barnegat Bay Complex. The typical facility is available to the boating community from April through November with hours of operation from 8 am until 5 pm, seven days a week. Seven facilities are available all year. Sixty-three of the existing pumpout facilities are connected to municipal sewage lines. Sewage from these facilities is routed to the Ocean County Municipal Utilities Authority where it undergoes secondary treatment. Three pumpout facilities (Ocean Gate Yacht Basin, Ocean Beach South and Causeway Boat Rental and Marina) store their waste in holding tanks for disposal by a septic waste hauler.

According to the State's petition, the vessel population for the waters of Barnegat Bay Complex is approximately 15,587 vessels which are docked at private residences and 12,900 vessels docked or moored at marinas or yacht clubs. The total vessel population is 28,487. The ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With sixty-six shore-side pumpout facilities and two pumpout vessel available to boaters, the ratio of docked or moored boats (including transients) is approximately 420 vessels per pumpout. Standard guidelines refer to acceptable ratios falling in the range of 300 to 600 vessels per pumpout. If the EPA calculation is employed (as listed in the guidance manual entitled, ''Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials—April 1994''), it estimates that twenty-four pumpouts are needed to provide adequate facilities.

Commercial vessels which operate in and around the harbor are engaged in fishing activities exclusively. Most of the operators will use the facilities where they dock or obtain fuel. The larger fishing vessels do not operate in the bay, but dock in the vicinity of Barnegat Light and fish the Atlantic Ocean.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Barnegat Bay Complex in Ocean County, New Jersey. A final determination on this matter will be made following the 30-day period for public comment regarding a New Jersey State prohibition of any sewage discharges from marine vessels in the Barnegat Bay Complex.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before May 1, 2003. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region 2, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York 10007–1866. Telephone: (212) 637–3880.

Dated: March 14, 2003.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 03–7799 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Wanda Dreslin, Supervisory Financial Analyst (202–452–3515) or Tina Robertson, Supervisory Financial Analyst (202–452–2949) for information concerning the specific bank holding company reporting requirements. The following may also be contacted regarding the information collection:

Federal Reserve Board Clearance Officer – Cindy Ayouch –Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority the revision, without extension, of the following reports:

Report title: Financial Statements for Bank Holding Companies

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 346,439.

Estimated average hours per response: FR Y–9C: 34.73 hours, FR Y–9LP: 4.75 hours, FR Y–9SP: 4.09 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,959, FR Y–9LP: 2,320, FR Y–9SP: 3,541, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs).

Current Actions: Many of the proposed reporting revisions that pertain to the FR Y–9 reports are being requested to parallel revisions to the Federal Financial Institutions Examination Council (FFIEC) Commercial bank Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). However, there are other revisions not directly related to the Call Report.

Also addressed in this notice is the requirement that BHCs electronically submit all FR Y–9 reports effective with the June 30, 2003, report date for FR Y–9C and FR Y–9 LP filers and December 31, 2003, report date for FR Y–9SP and FR Y–9ES filers. The Federal Reserve will no longer accept paper copy reports from BHCs as of these reporting dates.

March 2003 revisions

On December 24, 2002, the Board issued for public comment proposed revisions to bank holding company reports (67 FR 78467). The comment period expired on February 24, 2003. The Federal Reserve received comment letters from one bank holding company (BHC) trade association and four large BHCs. The comments received are addressed in detail below.

Accelerated Filing Deadline

The Federal Reserve originally proposed to require the filing of FR Y–9C, FR Y–9LP and FR Y–9SP reports within 35 days after the period end, consistent with the Securities and Exchange Commission's (SEC's) final rule to accelerate the filing of SEC quarterly reports to 35 days. However, the Federal Reserve proposed to implement the 35–day deadline in June 2004 whereas the SEC's phased–in rule accelerates the filing deadline to 40 days in March 2004 and 35 days in March 2005. All five commenters expressed concerns about their ability to meet the accelerated deadline as well as the burden of imposing the accelerated deadline on all FR Y–9 reporters, not just those filers with market exposure.

Commenters suggested several alternatives to the original proposal: (1) a phased–in approach consistent with the SEC's implementation of a 40–day deadline for 2004 and 35–day deadline for 2005; (2) a 40–day deadline; (3) an accelerated 35–day deadline for top–tier BHCs only, with lower–tier holding companies' deadline remaining at the current 45 days; (4) parent company only reports' (FR Y–9LP and FR Y–9SP) deadline remaining at the current 45 days; (5) a 35–day deadline for balance sheet and income statements with a 45–day deadline for all other supporting schedules; and (6) an extended 45–day deadline for year–end FR Y–9 reports. In addition, two commenters suggested

extending other regulatory filings if the Federal Reserve implemented the accelerated deadline as proposed.

In order to provide sufficient time for the BHCs to make changes to their software and internal programs, the Federal Reserve will follow the SEC's phased–in approach by delaying implementation until June 2004 for the 40–day deadline and June 2005 for the 35–day deadline. Also, the new filing deadlines will only apply to top–tier FR Y–9C filers for March, June, and September report dates. The December filing deadline for top–tier FR Y–9C filers will remain at 45 days after the report date. In addition, the filing deadline for FR Y–9LP, FR Y–9SP and all lower–tier BHCs that file the FR Y–9C will remain at 45 days after the report date.

The Federal Reserve also proposes that the 35–day deadline be defined as ''5 business days after the 30th day after the report date'' to allow time for integration of bank data in the event that the 30th day falls on a weekend. The Federal Reserve believes that the primary purpose of the accelerated deadline, market discipline, will be fulfilled by restricting the accelerated deadlines to top–tier BHCs since these entities are generally of more interest to users of financial information. The Federal Reserve will assess reporting under this definition of 35 days after implementation and may revise the deadline dates to conform precisely to the SEC deadline. Any modification would be addressed in a separate proposal.

Allocated Transfer Risk Reserves

The Federal Reserve proposed modifying the reporting instructions to the FR Y–9C regarding allocated transfer risk reserves (ATRR) to parallel March 2003 Call Report changes. As proposed, these provisions would be included in the provision for loan and lease losses rather than in other noninterest expense, with the amount of any provision for allocated transfer risk included in the provision for loan and lease losses separately disclosed. Two commenters supported this change as being more consistent with generally accepted accounting principles (GAAP), but recommended that the Federal Reserve also make a comparable change to the way in which the ATRR is reported on the FR Y–9C balance sheet.

The Federal Reserve agrees with these comments and will revise the FR Y–9C instructions to include any ATRR related to loans and leases in the allowance for loan and lease losses. With this change, instructions for reporting loan charge–offs and recoveries, the reconcilement of the loan loss allowance, and Tier 2 risk–based capital treatment will also be changed to reflect this revised method for treating ATRR.

In addition, one commenter suggested adding a memorandum item to collect the ATRR balance related to loans and leases included in the allowance for loan and lease losses, consistent with the March 2003 Call Report. The Federal Reserve decided to add this item to the FR Y–9C Schedule HI–B, part II.

Instructional Clarification for Use of Trading Account Designation for Loans

Because of questions concerning the categorization of certain loans as trading assets and to parallel the March 2003 Call Report changes, the Federal Reserve originally proposed to revise the Glossary definition of ''Trading Account'' and establish a rebuttable presumption that loans should not be reported as trading assets. Three commenters addressed this proposed instructional change and recommended that the Federal Reserve avoid creating a ''rebuttable presumption'' that does not exist in the accounting literature. They believe that it is appropriate to classify loans as trading assets under GAAP when they have been acquired as part of trading functions. Two commenters disagreed with including loans acquired from third parties and held for securitization in the held–for–sale category.

In considering these comments, the Federal Reserve will update the General Instructions section of the FR Y–9C loan schedule for situations where loans reported as trading assets should have been reported as held–for–sale or held–for–investment (rather than in the ''Trading Account'' Glossary entry). In so doing, the rebuttable presumption language will be removed. Furthermore, the Federal Reserve will retain the instructional language that explains that loans acquired (originated or purchased) and held for securitization purposes should be reported as loans held–for–sale.

Schedule HC–N – Past Due and Nonaccrual Loans, Leases, and Other Assets

The Federal Reserve proposed adding two items, additions to nonaccrual assets and the portion of nonaccrual assets that have been sold during the quarter, to collect data on the inflows and outflows of nonaccrual loans to enhance the Federal Reserve System's ability to assess portfolio credit quality, credit cycle trends, and approaches to problem asset resolution. Commenters stated that this information should be obtained through the examination process, but if the data were required, defer collection until December 31, 2003, to allow time to develop software for capturing the requested information. They further stated that the data would be of limited value and lack comparability across institutions due to differences in portfolio composition.

After reviewing the comments, the Federal Reserve will collect the two items on nonaccrual assets, as proposed. Data provided through the examination or inspection process are collected at staggered, infrequent intervals, are institution–specific with respect to formats, and are therefore unsuitable for comparative analysis. The information to be collected will be sufficient in tracking changes in the general or underlying credit quality trends of BHCs in aggregate and will provide specific information on an increasingly important aspect of risk management – asset sales.

The Federal Reserve acknowledges that the data collection could pose significant burden to large global banking organizations. As a result, the Federal Reserve will postpone the initial collection of nonaccrual information until December 31, 2003, to allow these organizations time to create the necessary data systems.

Selected Information of Large Predecessor or Acquired Companies

The Federal Reserve proposed collecting thirty items on the companies acquired by a BHC during any quarter in which such significant acquisitions were made. The items would only be collected for each firm with consolidated assets of $150 million or more. These profitability data would not otherwise be included in the consolidated financial statements of the combined entity under the purchase accounting method. Three comment letters addressed this proposed revision.

Commenters stated that seller financial statements submitted by the BHC during the application process are sufficient to satisfy the request for data collection. The Federal Reserve believes the ''applications'' financial statements often are stale and lack year–to–date information immediately prior to the merger date. Three commenters commenters expressed concern regarding the confidentiality of data solicited on the FR–Y9C. Specifically, these commenters wanted to insure the confidentiality of data not previously disclosed to the public. One commenter suggested all data on individual transactions be treated as confidential; another referred generally to ''any proprietary information that may not

have a GAAP disclosure requirement.'' The Board recognizes the concern expressed by these commenters but has concluded there is no reason to depart from its current practice of permitting the FR–Y9C filers to request confidential treatment in individual cases, which requests may be granted if properly supported.

Furthermore, commenters suggested a materiality threshold based on a percentage of assets or Tier 1 capital. As a result, the Federal Reserve has reconsidered its position and recommends a significantly higher reporting criterion of $10 billion in aggregate assets of all acquired entities during the quarter or 5 percent of the respondent's consolidated assets as of the previous quarter–end, whichever is lower. Another commenter questioned whether separate schedules or a single, combined schedule for each transaction would be required. The Federal Reserve will modify the FR Y–9C instructions to clarify that only a single schedule will need to be completed with aggregated information for all entities acquired during the quarter.

Commenters also stated unique or discreet information may no longer be available, particularly for nonbanking organizations acquired by the respondent, may be misleading, and may reflect institutional differences in areas such as accounting principles. The Federal Reserve believes excluding information that involves a significant acquirer may substantially distort aggregate data for broad segments of the industry. When a BHC acquires a nonbanking organization, the number of items the proposal requires is dramatically reduced. For example, for an insurance company without investment securities gains or losses, the pretax items to be collected would be limited to noninterest income, noninterest expense, and personnel expenses. While the Federal Reserve concurs that institutional differences may exist, they should not detract from the substance of financial statements prepared according to GAAP.

The Federal Reserve believes that most firms have accounting systems in place, which are maintained up to the date before a business entity ceases to be a going concern. However, one commenter provided additional information on rare situations that could emerge when only a portion of a firm may be purchased and actual financial statements may not be readily available for the acquirer. As a result, the Federal Reserve will accept estimates in lieu of actual data in these difficult circumstances.

One banking organization cited that merger–related adjustments to data might not be disclosed in the proposed items. In response, the Federal Reserve will modify the instructions to give BHCs the flexibility to provide merger–adjusted data.

Revised Filing Method

On September 16, 2002, the Federal Reserve issued for public comment revision to the filing method for bank holding company reports (67 FR 58425). The comment period expired on November 15, 2002. The comments received are addressed in detail below.

The Federal Reserve received comment letters from two bank holding company (BHC) trade associations, one large BHC, five small BHCs, and two accounting firms. The large BHC and one BHC association expressed support of the proposal to require electronic submission of the FR Y–9 series of reports. However, they expressed some specific concerns regarding the statement that the Federal Reserve anticipates in the future requiring that electronic submission software include data editing capabilities. The Federal Reserve appreciates the comments received regarding potential data editing capabilities of computer software, and will take these comments into consideration when this issue is formally addressed in a separate proposal for public comment at a later date.

Several small BHCs and one BHC association cited the cost to purchase software to submit the FR Y–9SP report electronically as prohibitive, and requested that small BHCs either be exempted from the electronic filing requirement, or that the Federal Reserve provide the means to file the report over the Internet. As referenced in the initial notice, the Federal Reserve provided the option to file the FR Y–9SP via the Internet in 2001 by means of data entry or file submission, referred to as the Internet Electronic Submission (IESUB) application. Bank holding companies interested in learning more about IESUB submission options should contact their district Federal Reserve Bank or go to www.reportingandreserves.org. for additional information.

One accounting firm requested that report submission software allow for the attachment of a compilation report for financial statements that they prepare for a third party. Submission of such a compilation report to the Federal Reserve is not a reporting requirement for BHC reports. Accounting firms may choose to have BHC clients maintain a hard copy of their compilation reports in the files of the BHC. Another accounting firm requested that reporting software allow for submission of Excel spreadsheets for the FR Y–9SP report and possibly other FR–Y series reports. FR Y–9SP and FR Y–9ES filers currently have the ability to submit text files created by Excel spreadsheets through IESUB, and they should contact their district Federal Reserve Bank or go to www.reportingandreserves.org for procedures for submitting such spreadsheets and information on other submission options.

One small BHC requested that the Federal Reserve provide an email notification to remind the institution that the report date is approaching. Reserve Banks will continue to provide notification in the same manner currently provided to respondents of reporting deadlines, changes to reporting requirements, and any pertinent supplemental instructions prior to each report date.

Another small BHC indicated that it does not own a computer and wishes to continue to submit paper reports. As indicated above, the Federal Reserve provides respondents the option to file the FR Y–9SP via the Internet by means of data entry. Information may be submitted through public Internet access, or respondents may choose to make arrangements for data submission through a private software vendor. Also one small BHC asked if software could allow for electronic signatures; however, current Federal Reserve and vendor software do not possess this feature. The BHC is only required to keep a signed copy in its files to meet the signature requirement.

In considering these comments, the Federal Reserve will implement the revised filing method as proposed. BHCs will be required to electronically submit all FR Y–9 reports effective with the June 30, 2003, report date for FR Y–9C and FR Y–9 LP filers and December 31, 2003, report date for FR Y–9SP and FR Y–9ES filers. The Federal Reserve will no longer accept paper copy reports from BHCs as of these reporting dates.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson

Deputy Secretary of the Board.

[FR Doc. 03–7728 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 2, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to Approve Under OMB Delegated Authority The Extension For Three Years, Without Revision, of the Following Reports:

1. Report title: The Senior Loan Officer Opinion Survey on Bank Lending Practices

Agency form number: FR 2018

OMB control number: 7100–0058

Frequency: Up to six times a year

Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks

Annual reporting hours: 1,008 hours

Estimated average hours per response: 2 hour

Number of respondents: 84

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§248 (a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. § 552 (b)(4)).

Abstract: The FR2018 is conducted with a senior loan officer at each respondent bank up to six times a year. The purpose of the survey is to provide qualitative information with respect to bank credit developments on current price and flow developments and evolving techniques and practices in the U.S. banking sector. Consequently, a significant portion of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

2. Report title: Senior Financial Officer Survey

Agency form number: FR 2023

OMB control number: 7100–0223

Frequency: Up to four times per year

Reporters: Large commercial banks

Annual reporting hours: 240 hours

Estimated average hours per response: 1 hour

Number of respondents: 60

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 248(a), and 263). It has been anticipated that most, if not all, of the information to be collected on the FR 2023 would be exempt from disclosure under subsection (b)(4) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4)). However, it also is possible that some information that might be collected on this survey may not be exempt, depending on the specific questions to be asked. Thus, the confidentiality status of the survey would be determined on a case–by–case basis.

Abstract: The FR 2023 collects qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets from a selection of sixty large commercial banks (or, if appropriate, from other depository institutions or major financial market participants). Although the primary panel of respondents has been, and will likely

continue to be, appropriate for most survey topics, panels based on alternative criteria may be more appropriate and efficient for some situations. Consequently, the option would continue to be available to survey other depository institutions or major participants in financial markets. This option greatly enhances the potential scope and utility of the survey. Responses are obtained from a senior officer at each participating institution through a telephone interview. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest. The survey helps pinpoint developing trends in bank funding practices, enabling the Federal Reserve to distinguish these trends from transitory phenomena.

Proposal to Approve Under OMB Delegated Authority The Extend, With Revision, the Following Reports:

1. Report titles: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and Quarterly Report of Credit Card Plans

Agency form numbers: FR 2835, and FR 2835a

OMB control number: 7100–0085

Frequency: Quarterly

Reporters: Commercial banks

Annual reporting hours: FR 2835: 90 hours; and FR 2835a: 160 hours

Estimated average hours per response: FR 2835: 9 minutes; and FR 2835a: 30 minutes

Number of respondents: FR 2835: 150; and FR 2835a: 80

Small businesses are not affected.

General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)), the FR 2835 data however, is not given confidential treatment.

Abstract: The FR 2835 collects the most common interest rate charged at a sample of 150 commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures.

The FR 2835a collects information on two measures of credit card interest rates from a sample of 100 commercial banks (authorized panel size), selected to include banks with $1 billion or more in credit card receivables, and a representative group of smaller issuers. The data are representative of interest rates paid by consumers on bank credit cards because the panel includes virtually all large issuers and an appropriate sample of other issuers.

Current Actions: The Federal Reserve proposes to decrease the authorized sample size for the FR 2835a from 100 commercial banks to 80 commercial banks; 24 banks currently report. The proposed decrease in panel size would lower the total estimated annual burden from 304 hours to 264 hours.

2. Report title: Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates

Agency form numbers: FR–Y8

OMB control number: 7100–0126

Frequency: Quarterly

Reporters: Bank holding companies (BHC), financial holding companies, and foreign banking organizations (FBO)

Annual reporting hours: 159,619 hours

Estimated average hours per response: 7.8 hours

Number of respondents: 5,116

Small businesses are affected.

General description of report: This information collection is authorized by section 5(c) of the BHC Act (12 U.S.C. 1844 (c)) and section 225.5 (b) of Regulation Y (12 CFR 225.5 (b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (8)).

Abstract: This report collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The information is used to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

Current actions: The Federal Reserve proposes the following changes to the data items collected on the FR Y–8, effective with the June 30, 2003, report date.

(1) Add a memoranda item to collect the maximum aggregate amount for all covered transactions for any single day during the calendar quarter. The collection of a single number representing the largest total end of day amount of all covered transactions in the quarter would enhance the Federal Reserve's ability to monitor and ensure ongoing compliance with section 23A.

(2) Add three items on derivative transactions between insured depository institutions and their affiliates: (1) Positive fair value of derivative contracts between the insured depository institution and its affiliates; (2) amount of collateral pledged to the insured depository institution to secure contracts between the insured depository institution and its affiliates; and (3) notional amount of derivative contracts between the insured depository institution and its affiliates. Only insured depository institutions that engage in derivative transactions with their affiliates would complete the three items. The collection of these three items would assist the Federal Reserve in monitoring derivative transactions and establishing policy regulating such transactions.

(3) Modify the FR Y–8 cover page to allow the respondent to provide the email address of the person to whom questions about this report should be directed.

Instructions

The current reporting instructions and glossary would be revised and clarified to reflect interpretations and definitions in Regulation W, the rule that comprehensively implements sections 23A and 23B of the Federal Reserve Act. Interpretations and definitions included in Regulation W would modify the information reported in current line items and in some cases covered transactions would be reported in different line items of the report. The instructions for the FR Y–8 declaration page would be revised to (1) clarify that an insured depository institution is not required to complete page 2 or page 3 of the report if it only engaged in covered transactions that are exempt pursuant to sections 223.41 and 223.42 of Regulation W and (2) indicate that BHCs with derivative transactions between insured depository institutions and their affiliates must complete the report form.

Regulation W also applies section 23A to transactions between U.S. branches and agencies of foreign bank and affiliates of the foreign bank engaged in the United States in new Gramm–Leach–Bliley Act activities. However, over 95 percent of the U.S. branches and agencies are uninsured and would not fall within the scope of this report. Consistent with current reporting requirements, foreign banks would not be required to submit a FR Y–8 for their insured U.S. branches and agencies.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7729 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

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 April 15, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Suzanne L. Meyerson Revocable Trust dated December 4, 2002; Robert E. Meyerson Revocable Trust dated December 4, 2002; Robert E. Meyerson; and Suzanne L. Meyerson, Trustees, all of Atwater, Minnesota; to acquire voting shares of Cattail Bancshares, Inc., Atwater, Minnesota, and thereby indirectly acquire voting shares of Atwater State Bank, Atwater, Minnesota, and State Bank of Kimball, Kimball, Minnesota.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7726 Filed 3–31–03; 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 April 25, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Triangle Financial Group, Inc., Loganville, Georgia; to become a bank holding by acquiring 100 percent of the voting shares of The Community Bank, Loganville, Georgia.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7727 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Interagency Committee on Smoking and Health (ICSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, through March 20, 2005.

For further information, contact Dana Shelton, Executive Secretary, Interagency Committee on Smoking and Health, Centers for Disease Control Prevention, of the Department of Health and Human Services, CDC, 4770 Buford Highway, N.E., M/S K–50, Atlanta, Georgia 30341–3717 telephone: 770–488–5709 or fax: 770/488–5767.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7739 Filed 3–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1404]

Determination of Regulatory Review Period for Purposes of Patent Extension; LEVULAN KERASTICK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LEVULAN KERASTICK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of

up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LEVULAN KERASTICK (aminolevulinic acid HCl). THE LEVULAN KERASTICK for topical solution plus blue light illumination using the BLU-U Blue Light Photodynamic Therapy Illuminator is indicated for the treatment of nonhyperkeratotic actinic keratoses of the face or scalp. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LEVULAN KERASTICK (U.S. Patent No. 5,079,262) from DUSA Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LEVULAN KERASTICK represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LEVULAN KERASTICK is 2,528 days. Of this time, 2,007 days occurred during the testing phase of the regulatory review period, while 521 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: January 2, 1993. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 1, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for LEVULAN KERASTICK (NDA 20–965) was initially submitted on July 1, 1998.

3. *The date the application was approved*: December 3, 1999. FDA has verified the applicant's claim that NDA 20–965 was approved on December 3, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,524 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 2, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 29, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director of Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–7711 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0014]

Draft Guidance on Human Subject Protection; HHS Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of solicitation of comments by HHS.

SUMMARY: The Food and Drug Administration (FDA) is announcing that in the issue of the **Federal Register** published March 31, 2003, the Department of Health and Human Services, Office of the Secretary, Office of Health and Science is soliciting public comment on a draft guidance document for Institutional Review Boards, investigators, research institutions, and other interested parties, entitled ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection.'' This draft guidance document raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects, and if so, what actions could be considered to protect those subjects. This draft guidance applies to human subjects research conducted or supported by HHS or regulated by FDA.

DATES: HHS is accepting written or electronic comments on the draft guidance until 4:30 p.m. on May 30, 2003.

Dated: January 21, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–7957 Filed 3–28–03; 2:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register,** 16 July 1996) as meeting the minimum standards of the ''Mandatory'' Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.
Pacific Toxicology Laboratories, 9348 De Soto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991 / 800–541–7891x8991.
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, 828–650–0409.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714.

The following laboratory voluntarily withdrew from the National Laboratory Certification Program (NLCP) on March 17, 2003: Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–7883 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Establishment of the Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Secretary of Homeland Security (Secretary) is establishing the Homeland Security Advisory Council (HSAC) effective April 1, 2003. The Secretary has determined that the HSAC is necessary and in the public interest in connection with the performance of his duties. The primary purpose of the HSAC will be to provide advice and recommendations to the Secretary on matters relating to homeland security. The HSAC will operate in an advisory capacity only. This notice is being provided in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The HSAC will terminate two years from the date of its establishment, unless extended by the Secretary.

In accordance with 41 CFR 102–3.65(b), as requested by the Department, the General Services Administration Committee Management Secretariat has approved a period of less than 15 calendar days pursuant to the publication of this notice for the filing of the HSAC Charter.

FOR FURTHER INFORMATION CONTACT: Cynthia Gismegian, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528, (202) 282–8000, *cynthia.gismegian@dhs.gov.*

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–7880 Filed 3–28–03; 11:43 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: contacts concerning Project Speak Out; Form G–1046.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) 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 December 12, 2002 at 67 FR 76418, allowing for a 60-day public comment period. No public comment was 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 May 1, 2003. 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 Homeland Security 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 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:* Contacts Concerning Project Speak Out!

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1046, Office of Policy and Planning, Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The agency will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60,000 responses at 52 minutes (0.866 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 51,960 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, U.S. Department of Homeland Security, 425 I Street, NW., Room 4034, 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.

Dated: March 25, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–7605 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: applicant Survey, Form G–942

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) 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 December 12, 2002 at 67 FR 76418, 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 May 1, 2003. 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 Homeland Security Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

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 currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–942, Human Resources Branch, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 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, U.S. Department of Homeland Security, 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.

Dated: March 25, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–7606 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License #	Issuing port
Beluga International Company.	16842	Tampa.
Serko & Simon International Trade Services, Inc.	20949	New York.
Yamato Customs Brokers USA, Inc.	9198	Los Angeles.
Suarez International, Inc.	11763	Nogales.
Jeffrey E. Brown.	9703	Boston.
James B. Fong.	3248	San Francisco.
Northwest Customs Brokers, Inc.	15651	Seattle.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7725 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Jill R. Ellsworth, Phoenix International.	35–01–066	Minneapolis.
Freight Services, Inc..	163	Seattle.
Daniel Delgado-White.	88–57	Buffalo.
Robert Stein ..	88–52	Buffalo.
Thomas Iuppa	88–51	Buffalo.
Neill F. Stroth	28–01–DZ8	San Francisco.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7724 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations(19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License #	Issuing port
George S. Engers.	7283	Miami.
HECNY Brokerage Services, Inc..	5356	San Francisco.
Robert A. Leslie.	5481	San Francisco.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7723 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker National Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permit is canceled without prejudice.

Name	Permit #	Issuing port
Neill F. Stroth	99–00129	Headquarters.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7722 Filed 3–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: biographical information/program eligibility questionnaire and practitioner fraud pilot program initial interview form, forms I–908 and I–909.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) 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 November 29, 2002, at 67 FR 71204. The notice allowed for a 60-day public review and comment period. No public comment was received by the agency.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 1, 2003. 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 Homeland Security 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 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.

Title of the Form/Collection: Biographical Information/Program Eligibility Questionnaire and Practitioner Fraud Pilot Program Initial Interview Form.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–908 and I–909. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the agency to identify unscrupulous immigration practitioners who intentionally defraud undocumented alien victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 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, U.S. Department of Homeland Security, 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.

Dated: March 26, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–7721 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–04]

Announcement of OMB Approval Number for Public Housing Agency Lease Requirement, Recordkeeping Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for HUD regulations that prescribe the provisions that shall be incorporated in leases by Public Housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act Of 1937 in projects owned by or leased to PHAs to the tenants. The recordkeeping requirement imposed upon PHAs by HUD regulations and associated information is incidental to PHAs' day-to-day operations as landlords of rental housing.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0614, extension 4250. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection for Public Housing Agency (PHA), LeaseRequirements, Recordkeeping Requirements. The OMB approval number for this information collection is 2577–0006, which expires March 31, 2006.

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.

Dated: March 25, 2003.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–7705 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–14]

Notice of Submission of Proposed Information Collection to OMB: Modernization of Public Housing Under the Comprehensive Grant Program (CGP) Reporting Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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:* May 1, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0157) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Modernization of Public Housing Under the Comprehensive Grant Program (CGP) Reporting Requirements.

OMB Approval Number: 2577–0157.

Form Numbers: HUD–52832, HUD–52833, HUD–52834, HUD–52835, HUD–52836, HUD–52837, HUD–52838, HUD–52839, HUD–52842.

Description of the Need for the Information and Its Proposed Use:

Public Housing Agencies (PHAs) with 250 units or more of public housing submit information to HUD for approval of PHAs' Annual Comprehensive Plans. The information is to reserve formula share of the nation allocation for the CGP, certify resident consultation by the local government, certify a PHA's compliance with statutory and regulatory requirements, and to monitor performance of the projected activities of the CGP funds.

The Public Housing Capital Fund Program will replace the CGP once final regulations are implemented.

Respondents: State or Local Government.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	832	1		66.3		55,162

Total Estimated Burden Hours: 55,162.

Status: Reinstatement, with change of a previously approved collection for which approval has expired. The reported burden hours has been increased 842 hours due to a re-estimation of that burden.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–7706 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–05]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *lauren_wittenberg@opm.eop.gov*, Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a guide format which specifies the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, *et seq.* The guide form was originally prepared in 1994 in view of changes in opinion practice. This guide form has been used in the past to establish the parameters of the opinion which HUD requires the counsel to the mortgagor to submit to HUD and the mortgagee. The guide clearly articulates those matters upon which HUD requires an opinion from private counsel, as well as those matters upon which confirmations are required. The guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion.

The Department regards the mortgagor's attorney as a crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in those multifamily rental and health care mortgage insurance programs where a note is endorsed for mortgage insurance by the Department. The existing guide form has expired and expedited processing of the guide is necessary to facilitate timely closings of pending multifamily mortgage insurance transactions. To the extent that the guide represents any ''collection of information,'' the process is necessary to ensure the Department that the attorney representing the mortgagor has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. The extent of due diligence expected to be performed under the guide is not substantially different from what HUD had anticipated under Form 1725 or from what qualified counsel, in fact, perform in conventional financing transactions.

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: Guide for Opinion of Mortgagor's Counsel.

Office: The Office of General Counsel.

OMB Control Number: 2510–0010.

Description of the need for the information and proposed use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: Guide.

Members of affected public: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700.

Status: Expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 26, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–7707 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–06]

Notice of Proposed Information Collection: Comment Request; Guide for Opinion of Counsel to the Mortgagor and HUD Guide for Counsel to Owner

AGENCY: Office of the General Counsel, 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:* June 2, 2003.

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:

Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 9230, Washington, DC 20410, telephone (202) 708–4090 (this is not a toll-free number) for copies of the proposed guide.

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 affecting 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: HUD Guide for Counsel to the Mortgagor and HUD Guide to Counsel to Owner.

OMB Control Number, if applicable: 2510–0010

Description of the need for the information and proposed use:

The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Agency form numbers, if applicable: Guide.

Members of affected public: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 or section 811 projects which receive capital advances from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: As closings occur in connection with the aforementioned projects.

Number of respondents	Burden hours	Frequency of response	Total burden hours
700	1.0	1	700

Status of the proposed information collection: Expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 26, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–7708 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on this application must be received at the address given below by May 1, 2003.

ADDRESSES: Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Endangered Species Permits Coordinator, telephone: 413–253–8628; facsimile: 413–253–8482.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, telephone: 413–253–8628; facsimile: 413–253–8482.

SUPPLEMENTARY INFORMATION: You are invited to comment on an application received from York University, Department of Biology, Toronto, Ontario, Canada, PRT–TE068166–0. The application requests authorization to take (harm) Karner blue butterfly (*Lycaeides melissa samuelis*) eggs and/or larvae from Saratoga County, New York; Lake and Porter Counties, Indiana; and Manistee, Wexford, Mason, Lake, Oceana, and Newaygo Counties, Michigan. This project may result in accidental injury or death of Karner blue butterfly eggs and/or larvae through unavoidable foot traffic when conducting field work. The applicant's objectives are to access the quality of potential reintroduction sites in Ontario, Canada; to identify the most suitable Karner blue butterfly source sites in the United States; and to compare the effect of different management methods by comparing vegetation structures of sites managed under different strategies. None of the proposed activities involves collection of Karner blue butterflies.

Dated: March 7, 2003.

Mamie A. Parker,

Regional Director.

[FR Doc. 03–7740 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102,

Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above within 30 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION:

Permit No. TE–676811

Applicant: U.S. Fish & Wildlife Service, Region 2, Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to add the scaleshell mussel (*Leptodea leptodon*) within Oklahoma.

Permit No. TE–819541

Applicant: Ecosystem Management, Inc., Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for northern aplomado falcon (*Falco femoralis septentrionalis*) with Arizona and New Mexico.

Permit No. TE–068175

Applicant: Jones & Stokes, Phoenix, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona. Additionally, applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, and Texas.

Permit No. TE–068895

Applicant: Southwest Texas State University, San Marcos, Texas.

Applicant requests a new permit for research and recovery purposes to survey, collect, and captively propagate Comal Springs dryopid beetle (*Stygoparnus comalensis*) and Peck's Cave amphipod (*Stygobromus pecki*) within Texas.

Permit No. TE–068189

Applicant: Archaeological Consulting Service, Ltd., Tempe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*), Yuma clapper rail (*Rallus longirostris yumanensis*), desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), razorback sucker (*Xyrauchen texanus*), and Gila trout (*Oncorhynchus gilae*) within Arizona. Additionally, applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) and lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona and New Mexico.

Permit No. TE–035179

Applicant: Denis Humphrey, Show Low, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona.

Permit No. TE–067869

Applicant: Rhea Environmental Consulting, Durango, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, Colorado, and Utah.

Permit No. TE–067868

Applicant: Coronado National Memorial, Hereford, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and habitat assessment for lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona.

Allan M. Strand,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–7741 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[(CA–670–1430 ER) CACA–44656]

Notice of Intent To Prepare an Amendment to the California Desert Conservation Area Plan for a 2.8 Mile Right-of-Way Proposed by Imperial Irrigation District for a Double Circuit 161 kV Overhead Transmission Line

AGENCY: Bureau of Land Management; El Centro Field Office, Interior.

ACTION: Notice of Intent (NOI) to prepare an Amendment to the California Desert Conservation Area (CDCA) Plan for a 2.8 mile Right-of-Way Proposed by Imperial Irrigation District (IID) for a Double Circuit 161 kV Overhead Transmission Line.

SUMMARY: This notice announces the Department of Interior, Bureau of Land Management (BLM)'s intent to prepare an amendment to the CDCA to consider issuance of a right-of-way proposed by Imperial Irrigation District (IID) for a double circuit 161 kV overhead transmission line. The purpose of the proposed transmission line is to deliver power generated by a proposed geothermal power plant to an existing IID electrical transmission line (L-line). The proposed L-Line Interconnection is a new 16-mile line of which approximately 2.8 miles will cross Federal lands in sections 8, 9 and 17, Township 13 South, Range 12 East, San Bernardino Meridian, Imperial County, California. The CDCA Plan requires new electrical transmission towers and cables of 161 Kv or above to be placed within designated corridors as identified in the Plan's Energy Production and Utility Corridor Element. An amendment to the CDCA Plan is necessary because the proposed right-of-way is outside any utility corridor designated by the CDCA Plan. The proposed plan amendment would allow an exception to the Energy Production and Utility Corridors element of the CDCA Plan, thereby allowing the issuance of a right-of-way grant to IID for the construction, operation, maintenance, and termination of a double circuit 161 kV overhead transmission line.

DATES: This notice initiates the public scoping process for the proposed plan amendment. Written comments are requested on this notice concerning the scope of analysis of the Environmental Assessment and Proposed Plan Amendment. Comments must be received within 30 days of the publication date of this notice in the **Federal Register**.

ADDRESSES: Please submit comments concerning the scope of the analysis for the Proposed Plan Amendment and Proposed Imperial Irrigation District 161 kV Transmission Line in writing to Lynda Kastoll, Bureau of Land Management, El Centro Field Office, 1661 So. 4th Street, El Centro, CA 92243. Documents pertinent to this proposal, including comments, may be examined at the El Centro Field Office during regular business hours (7:45 a.m.–4:45 p.m.), Monday through Friday, except holidays. Information concerning the status of the SSU6 Project, notices and other relevant documents are available on the CEC's Web site at *http://www.energy.ca.gov/sitingcases/saltonsea.* Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review of from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be available for public inspection in their entirety.

FOR FUTHER INFORMATION: Contact Lynda Kastoll at the above address or at (760) 337–4421.

SUPPLEMENTARY INFORMATION: On July 29, 2002, CE Obsidian Energy LLC (CEOE) filed an Application for Certification (AFC) seeking approval from the California Energy Commission (CEC) to construct and operate the Salton Sea Unit 6 Geothermal Energy Power Project (SSU6). The proposed geothermal project is a 185 MW geothermal electric generation facility located on private lands, approximately 1,000 feet southeast of the Salton Sea, and six miles northwest of Calipatria, CA, within an unincorporated area of Imperial County, California. The SSU6 Project will be owned by CEOE, and operated by an affiliate of CEOE. The IID will engineer, construct, own, operate, and maintain the transmission lines required for the facility. The proposed L-Line Interconnection is a new 16-mile double circuit 161 kV transmission line that would provide a direct inter-tie between the proposed SSU6 Project and IID's existing L-Line. The L-Line Interconnection would proceed south from the plant site along the east side of Severe Road, turning west along the south side of Kuns Road, then south along the east side of Crummer Road to Lindsey Road. The line would continue west along the south side of Lindsey Road to Lack Road, and then along the east side of Lack Road to Bannister Road west to Highway 86, and then across approximately 2.8 miles of BLM land to the existing L-Line.

BLM is soliciting comments only on the proposed plan amendment and the proposed right-of-way for the 2.8 miles of transmission line that would cross Federal lands. The CEC has the exclusive authority to certify the construction and operation of the SSU6 Geothermal Power Plant and related facilities. The CEC's thorough site certification process provides a timely review and analysis of all aspects of a proposed project, including need, public health and environmental impacts, safety, efficiency, and reliability. CEC's responsibilities are similar to those of a lead agency under the California Environmental Quality Act (CEQA).

Dated: January 14, 2003.

Greg Thomsen,

Field Manager.

[FR Doc. 03–7164 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1610–DH; AZA–31733]

Correction to Notice of Realty Action and Intent To Amend the Kingman Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Realty Action and Intent to Amend the Kingman Resource Management Plan.

SUMMARY: On March 26, 2003, the Bureau of Land Management published a notice in the **Federal Register** (68 FR 14687) concerning a proposed Shooting Range in Arizona. The notice contained an incorrect timeframe for when the public comment period ends. The correct timeframe is 45 days (May 10, 2003).

FOR FURTHER INFORMATION CONTACT: Joyce Cook, Realty Specialist, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona, 86401, telephone (928) 692–4428.

Correction

In the **Federal Register** of March 26, 2003 on page 14687 correct the ''Dates'' caption to read:

DATES: The public is invited to identify issues and concerns addressed in the EA to be prepared for the potential RMP amendment. Submissions should be in writing or by e-mail (see addresses below). Comments must be postmarked no later than 45 days following the date of publication of this notice in the **Federal Register**. Future public involvement activities, opportunities and review/comment periods will be announced at least 15 days in advance through other notices, media releases, or mailings. A public open house will be held on the Mohave Valley Campus of Mohave Community College, Room 210, 3400 Highway 95, Bullhead City, Arizona.

Dated: March 26, 2003.

Robin A. Sanchez,

Acting Field Manager, Kingman Field Office.

[FR Doc. 03–7742 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–747]

Fresh Tomatoes From Mexico; Notice of Commission Determination To Dismiss Request for Institution of a Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the suspension agreement in effect suspending investigation No. 731–TA–747: fresh tomatoes from Mexico.

SUMMARY: The Commission determines pursuant to section 751(b) of the Tariff Act of 1930 (the Act) [1] and Commission rule 207.45,[2] that the subject request does not show the existence of good cause or changed circumstances sufficient to warrant institution of an investigation to review the suspension agreement in effect suspending the Commission's investigation No. 731–TA–747: Fresh Tomatoes from Mexico. Pursuant to Commission rule 207.45(b),[3] the Commission also determines that the request is not sufficient to warrant the publication of a notice in the **Federal Register** seeking comment on the request.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. Hearing-impaired persons are advised that information on this matter

[1] 19 U.S.C. 1675(b).

[2] 19 CFR 207.45.

[3] 19 CFR 207.45(b).

can be obtained 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 matter may be viewed on the Commission's electronic docket (EDIS at *http://edis.usitc.gov*).

Background Information: In May of 1996, the Commission made an affirmative preliminary determination in *Fresh Tomatoes from Mexico,* Inv. No. 731–TA–747 (Preliminary), USITC Pub. 2967. On October 29, 1996, the Department of Commerce (Commerce) entered into a suspension agreement with growers/exporters of fresh tomatoes from Mexico. As a result, the Commission and Commerce suspended their investigations.[4]

On October 1, 2001, pursuant to section 751(c), Commerce initiated a five-year review of the suspension agreement, and the Commission instituted its five-year review.[5] Before the reviews were completed, the Mexican parties withdrew from the suspension agreement, effective July 30, 2002.[6] Commerce and the Commission terminated their five-year reviews and resumed their respective investigations, pursuant to 19 U.S.C. 734(i).[7] On December 4, 2002, before the resumed investigations were completed, Commerce and fresh tomato growers/exporters from Mexico entered into a new suspension agreement. Accordingly, pursuant to section 734(c), Commerce and the Commission again suspended their investigations.[8]

On February 10, 2003, the Commission received a request to institute a changed circumstances review of the suspension agreement currently in effect regarding imports of fresh tomatoes from Mexico. The request was filed by counsel for San Vicente Camalu, a producer of fresh tomatoes in Mexico, and for Expo Fresh, LLC, an importer of fresh tomatoes from Mexico (collectively, ''SVC'').

Analysis

In considering whether to institute a review investigation, the Commission must be persuaded that there is sufficient information available demonstrating:

(1) That there are significant changed circumstances from those in existence at the time of the determination or suspension agreement for which review is sought;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping duty order or suspension agreement; and

(3) That the changed circumstances, allegedly indicating that revocation of the order or termination of the suspended investigation would not be likely to lead to the continuation or recurrence of material injury to the domestic industry, warrant a full investigation.[9]

In general, changed circumstances warranting review are those relating to (1) the import pattern following imposition of an order and (2) market conditions.[10]

The Commission may not without good cause review a determination made under sections 705 or 735 of the Act, or suspension agreements made under sections 704 or 734 of the Act, less than 24 months after the date of publication of notice of that determination or suspension.[11] Good cause includes:

(1) Fraud or misfeasance in the proceeding for which review is sought;

(2) Acts of God, as exemplified where a severe freeze sharply reduced U.S. producers' shipments of frozen concentrated orange juice; and

(3) A mistake of law or fact in the proceeding for which review is requested that renders that proceeding unfair.[12]

This list ''is by no means exhaustive.''[13] However, ''good cause will be found only in an unusual case'' and ''[w]hat constitutes good cause will necessarily depend on the facts of a particular case.''[14] The review at issue here was requested less than 24 months after the date on which notice of the suspension agreement was published.

The Commission seeks comments on a request for a changed circumstances review upon receipt of a ''properly filed and sufficient request.''[15] The decision to undertake a review is ''a threshold question * * * [which] may be made only when it reasonably appears that positive evidence adduced by the petitioner together with other evidence gathered by the Commission leads the ITC to believe that there are changed circumstances sufficient to warrant review.''[16] The party requesting a changed circumstances review bears the burden of persuasion of showing that there are sufficient changed circumstances to warrant a review.[17]

SVC asserts that no five-year review will occur until 2007, due to the suspension of the investigation in 1996, the termination of that suspension agreement in 2002, and the entry into the second suspension agreement in 2002. SVC asserts that such a result is contrary to U.S. law and U.S. obligations under the World Trade Organization agreements. SVC does not, however, address the good cause requirement that applies to the requested review, nor does it allege any change in circumstances that have occurred since the entry into the suspension agreement in December of 2002. The entry into the suspension agreement does not itself constitute a changed circumstance. Given SVC's failure to assert the existence of good cause or any change in circumstances, the Commission concludes that SVC has not met its burden in this request. For the same reasons, the Commission concludes that SVC's request is not ''sufficient'' to warrant the issuance of a notice seeking comment on the request.

In light of the above, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the suspension agreement in effect suspending investigation No. 731–TA–747: Fresh Tomatoes from Mexico, is not warranted.

Issued: March 25, 2003.

[4] 61 FR 56618 (Nov. 1, 1996) (suspension of DOC investigation); 61 FR 58217, 58218 (Nov. 1, 1996) (suspension of ITC investigation).

[5] 66 FR 49926 (DOC), 66 FR 49975 (ITC).

[6] 67 FR 50858 (Aug. 6, 2002).

[7] 67 FR 50858 (Aug. 6, 2002) (DOC), 67 FR 56854, 56855 (Sept. 5, 2002) (ITC).

[8] 67 FR 77044 (Dec. 16, 2002) (DOC), 67 FR 78815 (Dec. 26, 2002) (ITC).

[9] *See generally Silicon Metal from Argentina, Brazil, and China,* 63 FR 52289 (Sept. 30, 1998) (citing, *inter alia, A. Hirsh, Inc.* v. *United States,* 737 F. Supp. 1186 (Ct. Int'l Trade 1990)).

[10] *A. Hirsh, Inc.* v. *United States,* 729 F. Supp. 1360, 1363 (Ct. Int'l Trade 1990).

[11] 19 U.S.C. 1675(b)(4).

[12] *See generally Porcelain-On-Steel Cooking Ware from Taiwan,* Views of the Commission Concerning Its Determination to Not Institute a Review of Investigation No. 731–TA–299, USITC Pub. 2117 (Aug. 1988) at 7–8 (citing *Welded Carbon Steel Pipes and Tubes from Turkey,* Commission Memorandum Opinion, in re Docket No. 1394; Request for review investigation under section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1675(b)). The Commission's views in *Porcelain-On-Steel Cooking Ware* reference the ''original investigation'' and ''original proceeding'' because at the time of those views (1988) the good cause requirement did not apply to Commission reviews of suspended investigations.

[13] *Id.* at 8.

[14] *Id.* at 7.

[15] 19 CFR 207.45(b).

[16] *Avesta AB* v. *United States,* 689 F. Supp 1173, 1181 (Ct. Int'l Trade 1988).

[17] 19 U.S.C. 1675(b)(1) & (3), *Avesta,* 689 F. Supp. at 1181.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7627 Filed 3–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Final)]

Non-Malleable Cast Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (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 threatened with material injury by reason of imports from China of non-malleable cast iron pipe fittings, provided for in subheadings 7307.11.00 and 7307.19.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

Background

The Commission instituted this investigation effective February 21, 2002, following receipt of a petition filed with the Commission and Commerce by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of non-malleable cast iron pipe fittings 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 October 24, 2002 (67 FR 65360). The hearing was held in Washington, DC, on February 11, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 24, 2003. The views of the Commission are contained in USITC Publication 3586 (March 2003), entitled Non-Malleable Cast Iron Pipe Fittings from China: Investigation No. 731–TA–990 (Final).

Issued: March 25, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7625 Filed 3–31–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gaming Standards Association

Notice is hereby given that, on March 6, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Gaming Standards Association (GSA) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are: 3M Touch Systems, Methuen, MA; Acres Gaming, Las Vegas, NV; Aristocrat Technologies, Inc., Las Vegas, NV; AstroSys International Ltd, Las Vegas, NV; Atronic Americas, LLC, Scottsdale, AZ; Austrian Gaming Industries GMbH, Lower Austria, AUSTRIA; Bally Gaming & Systems, Inc., Sparks, NV; Boyd Gaming Corporation, Las Vegas, NV; CashCode, Inc., Concord, Ontario, CANADA; Casino Management Association (CMA), St. Louis, MO; Coin Mechanisms, Inc., Glendale Heights, IL; Elo Touchsystems, Fremont, CA; Ensico d.o.o., Ljubljana, SLOVENIA; European Gaming Organisation (EGO), Lelystad, THE NETHERLANDS; Foxwoods Resort Casino, Mashantucket, CT; Friedberg & Associates, Woodinville, WA; Gaming Consultants International, Dingley, Victoria, AUSTRALIA; Global Payment Technologies, Hauppauge, NY; Gold Club, Sezana, SLOVENIA; Harrah's Entertainment, Las Vegas, NV; Himecs Co., Ltd, Tokyo, JAPAN; IDX, Inc., El Dorado, AR; IGT-International Game Technology, Reno, NV; Isle of Capri Casinos, Inc., Biloxi, MS: JCM American, Inc., Las Vegas, NV; Konami Gamin, Inc., Las Vegas, NV; Mandalay Resort Group, Jean, NV; Mars Electronics, West Chester, PA; Mikohn Gaming Corporation, Las Vegas, NV; MIS-Group, Grambach, AUSTRIA; Money Controls/ARDAC, Inc., Eastlake, OH; Park Place Entertainment, Las Vegas, NV; Scientific Games Corporation, Las Vegas, NV; Shuffle Master Gaming, Inc., Las Vegas, NV; Sierra Design Group, Reno, NV; Sigma Game, Inc., Las Vegas, NV; Spielo Manufacturing, Inc., Dieppe, New Brunswick, CANADA; Station Casinos, Las Vegas, NV; TransAct Technologies, Inc., Ithaca, NY; Unidesa, Barcelona, SPAIN; Universal Distributing, Las Vegas, NV; University of Nevada-Las Vegas, Las Vegas, NV; and WMS Gaming, Inc., Chicago, IL. The nature and objectives of the venture are to identify, define, develop, promote, and implement open standards to enable innovation, education, and communication for the benefit of the gaming industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–7713 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection NCJRS customer satisfaction surveys

The Department of Justice (DOJ), Office of Justice Programs, (OJP) National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''60 days'' until June 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed

information collection instrument with instructions or additional information, please contact William Ballweber, (202) 305–2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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:* DOJ requests three year extension of generic clearance to conduct customer satisfaction surveys.

(2) *Title of the Form/Collection:* NCJRS Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms Numbers: NCJ–CR–01–00 thorough NCJ–CR–01–07. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond to survey request, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students. The purpose of such surveys is to assess needs, identifying problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are an estimated 7,526 respondents who complete a survey. It will take the average respondent 10 minutes to respond by mail, 6 minutes to respond using the World Wide Web, 4 minutes to respond by telephone, 90 minutes to respond by teleconference, and 90 minutes for a focus group to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25,313 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 24, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–7712 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection, southwest border prosecution initiative.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 195, page 62817 on October 8, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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:* New collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local government. This information will assist BJA in determining program eligibility and payment levels for select units of general government in Texas, Arizona, New Mexico and California. It will also provide contact and banking information for purposes of ongoing communication and Federal payments resulting from submitting and approved online, Internet-based applications. The respondents will be the chief executive officers or their designees from local governments located in the four States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 250 respondents who will complete an application for benefits. The estimated amount of time required for the average respondent to respond is between 2 and 10 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 27, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–7810 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year (PY) 2003 Workforce Investment Act (WIA) Allotments; PY 2003 Wagner-Peyser Act Final Allotments; PY 2003 Reemployment Services Allotments; Fiscal Year (FY) 2003 Work Opportunity and Welfare to Work Tax Credit Allotments; and FY 2003 Congressional Rescissions for WIA Adults and Dislocated Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces states' allotments for PY 2003 (July 1, 2003–June 30, 2004) for WIA Title I Youth, Adults and Dislocated Worker programs; final allotments for public Employment Service (ES) activities under the Wagner-Peyser Act for PY 2003; Reemployment Services Allotments for PY 2003; Work Opportunity and (WtW) Tax Credit allotments for FY 2003; and FY 2003 Congressional Rescissions for WIA Adults and Dislocated Worker programs.

The WIA allotments for states and the final allotments for Wagner-Peyser ES activities are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, Notice. The formula for PY 2003, like PY 2002, is the same as used for PY 2000 and is described in the section on Youth allotments. Comments are invited upon the formula used to allot funds to the outlying areas.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave, NW., Room N–4702, Washington, DC 20210, Attention: Ms. Sherryl Bailey, 202–693–2813 (phone), 202–693–2859 (fax), e-mail: *bailey.sherryl@dol.gov.*

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments: Lorenzo Harrison at 202–693–3528; WIA Adult and Dislocated Worker Employment and Training Activities allotments: Marilyn Shea at 202–693–2712; ES final allotments: Anthony Dais at 202–693–2784. (These are not toll-free numbers.) Information may also be found at the Web site—*http://www.doleta.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing WIA allotments for PY 2003 (July 1, 2003–June 30, 2004) for Youth Activities, Adults and Dislocated Worker Activities, and Wagner-Peyser Act PY 2003 ES final allotments. This document provides information on the amount of funds available during PY 2003 to states with an approved WIA Title I and Wagner-Peyser 5-Year Strategic Plan and information regarding allotments to the outlying areas. The allotments and estimates are based on the funds appropriated in the Consolidated Appropriations Resolution, 2003, Public Law 108–7, February 20, 2003. This appropriation requires an across-the-board reduction of .65 percent to all FY 2003 discretionary programs, including FY 2003 advance funds for the WIA Adults and Dislocated Worker programs appropriated in the FY 2002 appropriation. Attached are tables listing the FY 2003 rescissions for the WIA Adults (Attachment II–A) and Dislocated Worker (Attachment III–A) programs and the PY 2003 allotments for programs under WIA Title I Youth Activities, Adults and Dislocated Workers Employment and Training Activities and the PY 2003 ES final allotments under the Wagner-Peyser Act. Also attached are tables displaying PY 2003 Reemployment Services allotments, and FY 2003 Work Opportunity and WtW Tax Credit allotments.

Youth Activities Allotments. PY 2003 Youth Activities funds under WIA total $1,038,669,477 (including $44,210,750 for Youth Opportunity grants and $994,458,727 for WIA Title I Youth Activities). Attachment I includes a breakdown of the Youth Activities program allotments for PY 2003 and provides a comparison of these allotments to PY 2002 Youth Activities allotments for all states, outlying areas, Puerto Rico and the District of Columbia. Before determining the amount available for states, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities, including Youth Opportunity Grants. WIA section 127(b)(1)(B)(i)(IV) provides that the Freely Associated States (Marshall Islands, Micronesia, and Palau) are not eligible for funding for any program year beginning after September 30, 2001. However, section 3 of Public Law 106–504, (November 13, 2000), supercedes this section of WIA, and provides that the Freely Associated States remain eligible for funding until negotiations on the Compact of Free Association is complete and consideration of legislation pursuant to the Compact is completed. This legislation remains uncompleted; therefore, the Freely Associated States are provided funds for PY 2003. The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, *i.e.*, funds are distributed among the areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. Data used for the relative share calculation in the formula were the same as used for PY 2002 for all outlying areas, essentially using 1995 Census data from special surveys. The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities excluding Youth Opportunity Grants, in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the States for PY 2003 is $976,945,172. This total amount was

below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, unlike in PY 2002, the WIA additional minimum provisions were not applied: (1) The minimum 1998 dollar (not percentage) (JTPA II–B and II–C combined) allotment, and (2) the two-tier small state minimum allotment (.3 percent of the first $1 billion and .4 percent of the amount over $1 billion). Instead, as required by WIA, the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2003 allotments:

(1) The number of unemployed for areas of substantial unemployment (ASU's) are averages for the 12-month period, July 2001 through preliminary June 2002;

(2) The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for the same 12-month period used for ASU unemployed data; and

(3) The number of economically disadvantaged youth (age 16 to 21, excluding college students and military) are from the 1990 Census. (2000 Census data are expected to be available for use for the PY 2004 allotment calculations.)

Adult Employment and Training Activities Allotments. The total Adult Employment and Training Activities appropriation is $898,778,000. Attachment II–B shows the PY 2003 Adult Employment and Training Activities allotments and comparison to PY 2002 allotments by state. Similarly to the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adults. The Adult Activities funds for grants to all outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the amount available for allotments to the states is $896,531,055. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2003 allotments because the total amount available for the states was below the $960 million threshold required for Adults in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the same data as used for the Youth Activities formula, except that data from the 1990 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used. (2000 Census data are expected to be available for use for the PY 2004 allotment calculations.)

Dislocated Worker Employment and Training Activities Allotments. The total Dislocated Worker appropriation is $1,431,340,495. The total appropriation includes formula funds for the states, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas Dislocated Worker allotments. Attachment III–B shows the PY 2003 Dislocated Worker Activities fund allotments by state. Like the Youth and Adults programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities. The Dislocated Worker Activities funds for grants to all outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same pro rata share as the areas received for the PY 2003 WIA Adult Activities program, the same methodology used in PY 2002. For the state distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2003 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2001 through September 2002;

(2) Number of excess unemployed, averages for the 12-month period, October 2001 through September 2002; and

(3) Number of long-term unemployed, averages for calendar year 2001.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for states directly reflect the impact of changes in the number of unemployed.

Wagner-Peyser Act Employment Service Final Allotments. The public Employment Service (ES) program involves a Federal-State partnership between the U.S. Department of Labor and the State Workforce Agencies. Under the Wagner-Peyser Act, funds are allotted to each state to administer a labor exchange program responding to the needs of the state's employers and workers through a system of local employment services offices that are part of the One-Stop service delivery system established by the state. Attachment IV shows the ES final allotments for PY 2003. These final allotments have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. They are based on monthly averages of the civilian labor force (CLF) and unemployment for the calendar year 2002. State planning estimates reflect $18,000,000 being withheld from distribution to states to finance postage costs associated with the conduct of Wagner-Peyser Act labor exchange services for PY 2003. The Secretary of Labor is required to set aside up to three percent of the total available funds to assure that each state will have sufficient resources to maintain statewide employment service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total planning estimate. The set-aside funds are distributed in two steps to states that have lost in relative share of resources from the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro-rata basis in Step 2 to all other states losing in relative share from the prior year but not meeting the size and density criteria for Step 1. Under the Wagner-Peyser Act section 7, ten percent of the total sums allotted to each state shall be reserved for use by the Governor to provide performance incentives for public ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Reemployment Services Allotments. The purpose of these funds is to ensure that Unemployment Insurance (UI) claimants receive the necessary services to become re-employed. The total funds available for PY 2003 are $34,772,500. The allotment figures for the distribution of funds for each state for PY 2003 are listed in Attachment V. The funds were distributed using the following administrative formula: each state received $215,000, with the remaining funds distributed using each state's share of first payments for FY 2002 to UI claimants.

Work Opportunity (WOTC) and Welfare to Work Tax Credit Program

Grants to States. Total funding for FY 2003 is $20,863,500. Attachment VI shows the PY 2003 Work Opportunity and Welfare to Work Tax Credit grants by state. After reserving $584,200 for postage and $20,000 for the Virgin Islands, funds are distributed to states by administrative formula with a $64,000 minimum allotment and a 95% stop-loss/120% stop-gain from the prior year allotment share percentage. The allocation formula is as follows:

(1) 50% based on each state's relative share of total FY 2002 certifications issued for the WOTC/WtW Tax Credit program;

(2) 30% based on each state's relative share of the CLF for calendar year 2001; and

(3) 20% based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2001.

Signed at Washington, DC this 26th day of March, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

Attachment I

U.S. Department of Labor
Employment and Training Administration
WIA Youth Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	**1,127,965,000**	**994,458,727**	**(133,506,273)**	**-11.84%**
Alabama	20,901,613	16,855,132	(4,046,481)	-19.36%
Alaska	4,059,320	3,222,244	(837,076)	-20.62%
Arizona	18,724,084	17,618,550	(1,105,534)	-5.90%
Arkansas	10,968,513	9,192,466	(1,776,047)	-16.19%
California	174,352,954	144,177,321	(30,175,633)	-17.31%
Colorado	7,246,178	8,308,353	1,062,175	14.66%
Connecticut	9,511,625	7,550,224	(1,961,401)	-20.62%
Delaware	3,430,651	2,723,213	(707,438)	-20.62%
District of Columbia	4,134,267	3,281,736	(852,531)	-20.62%
Florida	40,269,848	44,092,006	3,822,158	9.49%
Georgia	20,753,889	18,088,873	(2,665,016)	-12.84%
Hawaii	5,519,083	4,380,988	(1,138,095)	-20.62%
Idaho	4,707,720	3,736,937	(970,783)	-20.62%
Illinois	57,523,690	47,822,181	(9,701,509)	-16.87%
Indiana	13,604,901	15,599,164	1,994,263	14.66%
Iowa	4,026,670	3,789,782	(236,888)	-5.88%
Kansas	6,190,812	5,538,059	(652,753)	-10.54%
Kentucky	17,117,753	15,843,538	(1,274,215)	-7.44%
Louisiana	27,488,847	21,820,346	(5,668,501)	-20.62%
Maine	3,835,799	3,044,815	(790,984)	-20.62%
Maryland	13,734,681	11,663,795	(2,070,886)	-15.08%
Massachusetts	16,005,091	12,704,666	(3,300,425)	-20.62%
Michigan	38,712,364	40,644,085	1,931,721	4.99%
Minnesota	11,286,720	8,959,275	(2,327,445)	-20.62%
Mississippi	17,273,760	13,711,722	(3,562,038)	-20.62%
Missouri	15,939,667	16,181,718	242,051	1.52%
Montana	4,029,740	3,198,764	(830,976)	-20.62%
Nebraska	3,430,651	2,723,213	(707,438)	-20.62%
Nevada	4,983,868	5,714,424	730,556	14.66%
New Hampshire	3,430,651	2,723,213	(707,438)	-20.62%
New Jersey	29,273,666	23,237,116	(6,036,550)	-20.62%
New Mexico	10,371,230	8,232,569	(2,138,661)	-20.62%
New York	78,384,460	66,245,602	(12,138,858)	-15.49%
North Carolina	23,476,656	26,917,963	3,441,307	14.66%
North Dakota	3,430,651	2,723,213	(707,438)	-20.62%
Ohio	46,654,314	39,875,453	(6,778,861)	-14.53%
Oklahoma	9,427,216	7,741,715	(1,685,501)	-17.88%
Oregon	13,507,227	15,487,173	1,979,946	14.66%
Pennsylvania	39,258,866	32,978,730	(6,280,136)	-16.00%
Puerto Rico	55,047,926	43,696,441	(11,351,485)	-20.62%
Rhode Island	3,430,651	2,723,213	(707,438)	-20.62%
South Carolina	14,935,516	14,607,125	(328,391)	-2.20%
South Dakota	3,430,651	2,723,213	(707,438)	-20.62%
Tennessee	21,110,535	18,331,645	(2,778,890)	-13.16%
Texas	91,315,821	82,983,454	(8,332,367)	-9.12%
Utah	3,803,175	4,360,660	557,485	14.66%
Vermont	3,430,651	2,723,213	(707,438)	-20.62%
Virginia	16,534,311	14,274,975	(2,259,336)	-13.66%
Washington	30,638,767	27,578,685	(3,060,082)	-9.99%
West Virginia	10,601,615	8,415,446	(2,186,169)	-20.62%
Wisconsin	12,972,896	13,453,552	480,656	3.71%
Wyoming	3,430,651	2,723,213	(707,438)	-20.62%
State Total	1,107,662,862	976,945,172	(130,717,690)	-11.80%
American Samoa	132,755	91,717	(41,038)	-30.91%
Guam	1,297,603	896,485	(401,118)	-30.91%
Marshall Islands	300,725	207,764	(92,961)	-30.91%
Micronesia	534,840	462,834	(72,006)	-13.46%
Northern Marianas	208,905	208,474	(431)	-0.21%
Palau	76,690	75,000	(1,690)	-2.20%
Virgin Islands	831,145	654,400	(176,745)	-21.27%
Outlying Areas Total	3,382,663	2,596,674	(785,989)	-23.24%
Native Americans	16,919,475	14,916,881	(2,002,594)	-11.84%

Attachment II-A

U. S. Department of Labor
Employment and Training Administration
WIA Adult Activities
2003 Appropriation Rescission to FY 2003 Advance (Available 10/1/02) Funds
in PY 2002 State Allotments

State	Initial	0.65%	Revised
Total	$712,000,000	$4,628,000	$707,372,000
Alabama	13,915,979	90,454	13,825,525
Alaska	2,718,797	17,672	2,701,125
Arizona	12,176,737	79,149	12,097,588
Arkansas	7,276,064	47,294	7,228,770
California	112,976,740	734,347	112,242,393
Colorado	3,890,959	25,291	3,865,668
Connecticut	4,544,739	29,541	4,515,198
Delaware	1,775,550	11,541	1,764,009
District of	2,678,752	17,412	2,661,340
Florida	26,831,674	174,406	26,657,268
Georgia	13,498,461	87,740	13,410,721
Hawaii	3,672,707	23,873	3,648,834
Idaho	3,076,355	19,996	3,056,359
Illinois	38,303,586	248,973	38,054,613
Indiana	7,302,262	47,465	7,254,797
Iowa	2,398,232	15,589	2,382,643
Kansas	4,169,331	27,101	4,142,230
Kentucky	10,786,315	70,111	10,716,204
Louisiana	18,120,070	117,780	18,002,290
Maine	2,226,907	14,475	2,212,432
Maryland	9,380,664	60,974	9,319,690
Massachusetts	7,578,426	49,260	7,529,166
Michigan	23,919,593	155,477	23,764,116
Minnesota	7,439,454	48,356	7,391,098
Mississippi	10,855,821	70,563	10,785,258
Missouri	10,739,641	69,808	10,669,833
Montana	2,812,854	18,284	2,794,570
Nebraska	1,775,550	11,541	1,764,009
Nevada	3,339,514	21,707	3,317,807
New Hampshire	1,775,550	11,541	1,764,009
New Jersey	14,123,828	91,805	14,032,023
New Mexico	6,648,448	43,215	6,605,233
New York	54,386,185	353,510	54,032,675
North Carolina	15,739,393	102,306	15,637,087
North Dakota	1,775,550	11,541	1,764,009
Ohio	31,259,830	203,189	31,056,641
Oklahoma	6,229,688	40,493	6,189,195
Oregon	9,079,480	59,017	9,020,463
Pennylvania	27,118,802	176,272	26,942,530
Puerto Rico	36,846,722	239,504	36,607,218
Rhode Island	1,775,550	11,541	1,764,009
South Carolina	8,565,387	55,675	8,509,712
South Dakota	1,775,550	11,541	1,764,009
Tennessee	14,299,002	92,944	14,206,058
Texas	58,398,242	379,589	58,018,653
Utah	2,152,316	13,990	2,138,326
Vermont	1,775,550	11,541	1,764,009
Virginia	8,417,021	54,711	8,362,310
Washington	20,441,603	132,870	20,308,733
West Virginia	7,122,093	46,294	7,075,799
Wisconsin	8,556,925	55,620	8,501,305
Wyoming	1,775,550	11,541	1,764,009
State Total	710,219,999	4,616,430	705,603,569
American Samoa	86,635	563	86,072
Guam	374,258	2,433	371,825
Marshall Islands	184,011	1,196	182,815
Micronesia	354,578	2,305	352,273
Northern Marianas	221,535	1,440	220,095
Palau	57,647	375	57,272
Virgin Islands	501,337	3,258	498,079
Outlying Areas	1,780,001	11,570	1,768,431

Attachment II-B

U.S. Department of Labor
Employment and Training Administration
WIA Adult Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	**950,000,000**	**898,778,000**	**(51,222,000)**	**-5.39%**
Alabama	18,567,668	15,809,885	(2,757,783)	-14.85%
Alaska	3,627,608	3,088,814	(538,794)	-14.85%
Arizona	16,247,051	16,106,496	(140,555)	-0.87%
Arkansas	9,708,232	8,510,825	(1,197,407)	-12.33%
California	150,741,436	128,352,398	(22,389,038)	-14.85%
Colorado	5,191,589	6,385,170	1,193,581	22.99%
Connecticut	6,063,908	5,163,259	(900,649)	-14.85%
Delaware	2,369,063	2,241,328	(127,735)	-5.39%
District of Columbia	3,574,178	3,043,319	(530,859)	-14.85%
Florida	35,800,688	42,506,473	6,705,785	18.73%
Georgia	18,010,587	16,416,374	(1,594,213)	-8.85%
Hawaii	4,900,382	4,172,547	(727,835)	-14.85%
Idaho	4,104,687	3,495,034	(609,653)	-14.85%
Illinois	51,107,313	43,516,543	(7,590,770)	-14.85%
Indiana	9,743,186	11,983,210	2,240,024	22.99%
Iowa	3,199,888	3,479,855	279,967	8.75%
Kansas	5,563,012	5,225,669	(337,343)	-6.06%
Kentucky	14,391,853	15,065,366	673,513	4.68%
Louisiana	24,177,060	20,586,135	(3,590,925)	-14.85%
Maine	2,971,294	2,529,979	(441,315)	-14.85%
Maryland	12,516,336	11,140,826	(1,375,510)	-10.99%
Massachusetts	10,111,664	9,146,541	(965,123)	-9.54%
Michigan	31,915,187	37,426,616	5,511,429	17.27%
Minnesota	9,926,238	8,451,933	(1,474,305)	-14.85%
Mississippi	14,484,593	12,333,253	(2,151,340)	-14.85%
Missouri	14,329,577	15,255,516	925,939	6.46%
Montana	3,753,106	3,195,672	(557,434)	-14.85%
Nebraska	2,369,063	2,241,328	(127,735)	-5.39%
Nevada	4,455,812	5,480,233	1,024,421	22.99%
New Hampshire	2,369,063	2,241,328	(127,735)	-5.39%
New Jersey	18,844,995	20,462,777	1,617,782	8.58%
New Mexico	8,870,823	7,553,274	(1,317,549)	-14.85%
New York	72,565,836	64,833,150	(7,732,686)	-10.66%
North Carolina	21,000,594	25,828,772	4,828,178	22.99%
North Dakota	2,369,063	2,241,328	(127,735)	-5.39%
Ohio	41,709,042	37,400,608	(4,308,434)	-10.33%
Oklahoma	8,312,084	7,266,384	(1,045,700)	-12.58%
Oregon	12,114,474	14,899,673	2,785,199	22.99%
Pennsylvania	36,183,794	31,825,313	(4,358,481)	-12.05%
Puerto Rico	49,163,463	41,861,405	(7,302,058)	-14.85%
Rhode Island	2,369,063	2,241,328	(127,735)	-5.39%
South Carolina	11,428,536	13,621,665	2,193,129	19.19%
South Dakota	2,369,063	2,241,328	(127,735)	-5.39%
Tennessee	19,078,725	17,352,119	(1,726,606)	-9.05%
Texas	77,919,002	74,481,312	(3,437,690)	-4.41%
Utah	2,871,770	3,532,009	660,239	22.99%
Vermont	2,369,063	2,241,328	(127,735)	-5.39%
Virginia	11,230,576	13,305,145	2,074,569	18.47%
Washington	27,274,610	25,857,712	(1,416,898)	-5.19%
West Virginia	9,502,793	8,091,380	(1,411,413)	-14.85%
Wisconsin	11,417,246	12,559,792	1,142,546	10.01%
Wyoming	2,369,063	2,241,328	(127,735)	-5.39%
State Total	947,625,000	896,531,055	(51,093,945)	-5.39%
American Samoa	115,594	98,425	(17,169)	-14.85%
Guam	499,361	477,793	(21,568)	-4.32%
Marshall Islands	245,520	209,054	(36,466)	-14.85%
Micronesia	473,102	452,668	(20,434)	-4.32%
Northern Marianas	295,587	293,977	(1,610)	-0.54%
Palau	76,917	75,000	(1,917)	-2.49%
Virgin Islands	668,919	640,028	(28,891)	-4.32%
Outlying Areas Total	2,375,000	2,246,945	(128,055)	-5.39%

Attachment III-A

U. S. Department of Labor
Employment and Training Administration
Dislocated Worker Activities
2003 Appropriation Rescission to FY 2003 Advance (Available 10/1/02) Funds
in PY 2002 State Allotments

State	Initial	0.65%	Revised
Total	**$1,060,000,000**	**$6,890,000**	**$1,053,110,000**
Alabama	15,668,655	101,846	15,566,809
Alaska	6,618,330	43,019	6,575,311
Arizona	8,626,527	56,072	8,570,455
Arkansas	5,166,867	33,585	5,133,282
California	149,527,433	971,926	148,555,507
Colorado	5,049,408	32,821	5,016,587
Connecticut	3,684,819	23,951	3,660,868
Delaware	1,748,170	11,363	1,736,807
District of Columbia	6,047,325	39,308	6,008,017
Florida	27,445,623	178,397	27,267,226
Georgia	13,028,790	84,687	12,944,103
Hawaii	2,903,547	18,873	2,884,674
Idaho	4,367,311	28,388	4,338,923
Illinois	62,856,355	408,566	62,447,789
Indiana	8,396,618	54,578	8,342,040
Iowa	3,310,555	21,519	3,289,036
Kansas	4,376,254	28,446	4,347,808
Kentucky	7,674,658	49,885	7,624,773
Louisiana	30,345,085	197,243	30,147,842
Maine	2,305,021	14,983	2,290,038
Maryland	11,607,743	75,450	11,532,293
Massachusetts	8,431,525	54,805	8,376,720
Michigan	18,929,575	123,042	18,806,533
Minnesota	7,828,437	50,885	7,777,552
Mississippi	13,488,179	87,673	13,400,506
Missouri	10,815,795	70,303	10,745,492
Montana	2,252,149	14,639	2,237,510
Nebraska	1,898,988	12,343	1,886,645
Nevada	4,548,883	29,568	4,519,315
New Hampshire	1,547,343	10,058	1,537,285
New Jersey	18,144,943	117,942	18,027,001
New Mexico	12,109,929	78,715	12,031,214
New York	46,102,645	299,667	45,802,978
North Carolina	18,619,945	121,030	18,498,915
North Dakota	820,037	5,330	814,707
Ohio	23,421,804	152,242	23,269,562
Oklahoma	4,433,022	28,815	4,404,207
Oregon	20,345,957	132,249	20,213,708
Pennylvania	28,510,583	185,319	28,325,264
Puerto Rico	83,723,148	544,200	83,178,948
Rhode Island	1,834,382	11,923	1,822,459
South Carolina	8,208,945	53,358	8,155,587
South Dakota	674,096	4,382	669,714
Tennessee	9,530,732	61,950	9,468,782
Texas	40,911,246	265,923	40,645,323
Utah	2,966,131	19,280	2,946,851
Vermont	894,255	5,813	888,442
Virginia	7,603,645	49,424	7,554,221
Washington	46,865,551	304,626	46,560,925
West Virginia	10,423,193	67,751	10,355,442
Wisconsin	10,480,129	68,121	10,412,008
Wyoming	879,714	5,718	873,996
State Total	848,000,000	5,512,000	842,488,000
American Samoa	128,979	838	128,141
Guam	557,182	3,622	553,560
Marshall Islands	273,949	1,781	272,168
Micronesia	527,882	3,431	524,451
Northern Marianas	329,813	2,144	327,669
Palau	85,823	558	85,265
Virgin Islands	746,373	4,851	741,522
Outlying Areas	2,650,001	17,225	2,632,776
National Reserve	209,349,999	1,360,775	207,989,224

Attachment III-B

U.S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	**1,549,000,000**	**1,431,340,495**	**(117,659,505)**	**-7.60%**
Alabama	22,896,931	19,733,903	(3,163,028)	-13.81%
Alaska	9,671,503	3,547,956	(6,123,547)	-63.32%
Arizona	12,606,123	19,319,754	6,713,631	53.26%
Arkansas	7,550,450	8,418,083	867,633	11.49%
California	218,507,541	181,903,156	(36,604,385)	-16.75%
Colorado	7,378,805	12,699,522	5,320,717	72.11%
Connecticut	5,384,702	6,574,440	1,189,738	22.09%
Delaware	2,554,637	1,626,875	(927,762)	-36.32%
District of Columbia	8,837,081	3,426,849	(5,410,232)	-61.22%
Florida	40,106,859	56,772,587	16,665,728	41.55%
Georgia	19,039,241	19,959,194	919,953	4.83%
Hawaii	4,243,014	3,523,052	(719,962)	-16.97%
Idaho	6,382,042	4,620,076	(1,761,966)	-27.61%
Illinois	91,853,295	63,948,516	(27,904,779)	-30.38%
Indiana	12,270,152	18,749,009	6,478,857	52.80%
Iowa	4,837,782	4,754,065	(83,717)	-1.73%
Kansas	6,395,111	5,885,172	(509,939)	-7.97%
Kentucky	11,215,137	15,391,281	4,176,144	37.24%
Louisiana	44,343,903	22,202,620	(22,141,283)	-49.93%
Maine	3,368,375	2,416,484	(951,891)	-28.26%
Maryland	16,962,636	13,878,761	(3,083,875)	-18.18%
Massachusetts	12,321,163	16,346,535	4,025,372	32.67%
Michigan	27,662,181	49,265,375	21,603,194	78.10%
Minnesota	11,439,858	10,861,209	(578,649)	-5.06%
Mississippi	19,710,556	15,052,083	(4,658,473)	-23.63%
Missouri	15,805,346	17,431,907	1,626,561	10.29%
Montana	3,291,112	2,077,280	(1,213,832)	-36.88%
Nebraska	2,775,031	2,888,995	113,964	4.11%
Nevada	6,647,377	9,376,689	2,729,312	41.06%
New Hampshire	2,261,165	2,502,182	241,017	10.66%
New Jersey	26,515,582	30,098,146	3,582,564	13.51%
New Mexico	17,696,491	7,082,177	(10,614,314)	-59.98%
New York	67,370,751	85,640,106	18,269,355	27.12%
North Carolina	27,209,712	43,544,252	16,334,540	60.03%
North Dakota	1,198,337	950,765	(247,572)	-20.66%
Ohio	34,226,768	39,264,551	5,037,783	14.72%
Oklahoma	6,478,067	6,353,809	(124,258)	-1.92%
Oregon	29,731,969	25,742,763	(3,989,206)	-13.42%
Pennsylvania	41,663,107	44,985,677	3,322,570	7.97%
Puerto Rico	122,346,374	36,968,824	(85,377,550)	-69.78%
Rhode Island	2,680,620	2,582,668	(97,952)	-3.65%
South Carolina	11,995,901	17,690,855	5,694,954	47.47%
South Dakota	985,071	1,278,341	293,270	29.77%
Tennessee	13,927,456	17,752,044	3,824,588	27.46%
Texas	59,784,453	91,566,972	31,782,519	53.16%
Utah	4,334,469	6,466,518	2,132,049	49.19%
Vermont	1,306,794	1,298,772	(8,022)	-0.61%
Virginia	11,111,364	14,032,707	2,921,343	26.29%
Washington	68,485,602	39,395,498	(29,090,104)	-42.48%
West Virginia	15,231,628	6,944,168	(8,287,460)	-54.41%
Wisconsin	15,314,830	19,403,913	4,089,083	26.70%
Wyoming	1,285,545	955,311	(330,234)	-25.69%
State Total	1,239,200,000	1,155,152,447	(84,047,553)	-6.78%
American Samoa	188,479	156,745	(31,734)	-16.84%
Guam	814,221	760,747	(53,474)	-6.57%
Marshall Islands	400,327	332,926	(67,401)	-16.84%
Micronesia	771,405	720,743	(50,662)	-6.57%
Northern Marianas	481,963	468,072	(13,891)	-2.88%
Palau	125,415	120,059	(5,356)	-4.27%
Virgin Islands	1,090,690	1,019,059	(71,631)	-6.57%
Outlying Area Total	3,872,500	3,578,351	(294,149)	-7.60%
National Reserve	305,927,500	272,609,697	(33,317,803)	-10.89%

Attachment IV

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser) State Allotments
PY 2003 Final vs PY 2002 Final

	Final PY 2002	Final PY 2003	Difference	% Change
Total	761,735,000	756,783,722	(4,951,278)	-0.65%
Alabama	10,891,481	10,553,788	(337,693)	-3.10%
Alaska	8,106,495	8,030,931	(75,564)	-0.93%
Arizona	11,626,345	12,708,064	1,081,719	9.30%
Arkansas	6,255,851	6,112,317	(143,534)	-2.29%
California	88,500,302	87,026,157	(1,474,145)	-1.67%
Colorado	10,301,856	11,310,375	1,008,519	9.79%
Connecticut	8,032,006	7,858,518	(173,488)	-2.16%
Delaware	2,082,968	2,063,552	(19,416)	-0.93%
District of Columbia	3,254,942	3,121,006	(133,936)	-4.11%
Florida	36,932,996	36,944,410	11,414	0.03%
Georgia	19,441,833	19,256,784	(185,049)	-0.95%
Hawaii	3,115,883	2,987,670	(128,213)	-4.11%
Idaho	6,754,153	6,691,195	(62,958)	-0.93%
Illinois	31,972,759	31,475,936	(496,823)	-1.55%
Indiana	14,560,124	14,373,896	(186,228)	-1.28%
Iowa	6,952,699	6,972,545	19,846	0.29%
Kansas	6,595,682	6,482,034	(113,648)	-1.72%
Kentucky	9,949,880	9,652,389	(297,491)	-2.99%
Louisiana	10,956,434	10,518,812	(437,622)	-3.99%
Maine	4,016,631	3,979,190	(37,441)	-0.93%
Maryland	13,486,099	13,115,865	(370,234)	-2.75%
Massachusetts	15,101,771	15,782,983	681,212	4.51%
Michigan	25,855,187	25,159,933	(695,254)	-2.69%
Minnesota	12,556,225	12,501,180	(55,045)	-0.44%
Mississippi	7,074,189	6,850,823	(223,366)	-3.16%
Missouri	14,247,515	14,008,971	(238,544)	-1.67%
Montana	5,519,529	5,468,079	(51,450)	-0.93%
Nebraska	6,633,389	6,571,557	(61,832)	-0.93%
Nevada	5,290,387	5,214,637	(75,750)	-1.43%
New Hampshire	3,035,822	3,083,468	47,646	1.57%
New Jersey	20,564,472	20,384,182	(180,290)	-0.88%
New Mexico	6,193,882	6,136,146	(57,736)	-0.93%
New York	45,863,436	45,169,427	(694,009)	-1.51%
North Carolina	20,275,400	20,470,545	195,145	0.96%
North Dakota	5,620,532	5,568,141	(52,391)	-0.93%
Ohio	27,983,201	27,526,534	(456,667)	-1.63%
Oklahoma	7,925,054	7,713,677	(211,377)	-2.67%
Oregon	9,586,808	9,468,627	(118,181)	-1.23%
Pennsylvania	29,822,619	29,420,399	(402,220)	-1.35%
Puerto Rico	9,938,300	9,538,343	(399,957)	-4.02%
Rhode Island	2,537,871	2,506,567	(31,304)	-1.23%
South Carolina	9,821,032	9,607,931	(213,101)	-2.17%
South Dakota	5,194,663	5,146,242	(48,421)	-0.93%
Tennessee	13,585,282	13,368,481	(216,801)	-1.60%
Texas	51,244,750	51,580,580	335,830	0.66%
Utah	9,803,073	9,399,693	(403,380)	-4.11%
Vermont	2,433,477	2,410,794	(22,683)	-0.93%
Virginia	16,111,056	15,892,108	(218,948)	-1.36%
Washington	16,141,463	15,903,378	(238,085)	-1.47%
West Virginia	5,945,805	5,890,382	(55,423)	-0.93%
Wisconsin	14,193,276	14,010,878	(182,398)	-1.29%
Wyoming	4,030,272	3,992,704	(37,568)	-0.93%
State Total	743,917,157	736,982,824	(6,934,333)	-0.93%
Guam	348,947	345,694	(3,253)	-0.93%
Virgin Islands	1,468,896	1,455,204	(13,692)	-0.93%
Postage	16,000,000	18,000,000	2,000,000	12.50%

Attachment V

U. S. Department of Labor
Employment and Training Administration
Reemployment Services Allotments
PY 2003 vs PY 2002

	PY 2002	PY 2003	Difference	% Change
Total	$35,000,000	$34,772,500	-$227,500	-0.65%
Alabama	636,366	550,972	-85,394	-13.42%
Alaska	330,553	326,058	-4,495	-1.36%
Arizona	469,321	510,304	40,983	8.73%
Arkansas	490,925	458,459	-32,466	-6.61%
California	3,332,953	3,404,676	71,723	2.15%
Colorado	416,385	480,637	64,252	15.43%
Connecticut	564,660	571,624	6,964	1.23%
Delaware	286,908	286,781	-127	-0.04%
District of Columbia	263,530	270,980	7,450	2.83%
Florida	966,973	1,071,667	104,694	10.83%
Georgia	875,223	811,784	-63,439	-7.25%
Hawaii	290,627	307,783	17,156	5.90%
Idaho	354,739	349,504	-5,235	-1.48%
Illinois	1,272,883	1,296,182	23,299	1.83%
Indiana	720,996	677,166	-43,830	-6.08%
Iowa	500,750	471,939	-28,811	-5.75%
Kansas	394,124	400,504	6,380	1.62%
Kentucky	583,210	523,881	-59,329	-10.17%
Louisiana	430,780	439,271	8,491	1.97%
Maine	300,451	290,972	-9,479	-3.15%
Maryland	507,019	517,652	10,633	2.10%
Massachusetts	821,230	911,443	90,213	10.99%
Michigan	1,513,365	1,362,258	-151,107	-9.98%
Minnesota	597,430	606,834	9,404	1.57%
Mississippi	421,733	390,956	-30,777	-7.30%
Missouri	652,106	622,700	-29,406	-4.51%
Montana	285,137	274,081	-11,056	-3.88%
Nebraska	308,177	312,249	4,072	1.32%
Nevada	411,066	436,289	25,223	6.14%
New Hampshire	275,911	270,234	-5,677	-2.06%
New Jersey	958,429	993,139	34,710	3.62%
New Mexico	300,341	302,529	2,188	0.73%
New York	1,647,588	1,682,704	35,116	2.13%
North Carolina	1,130,772	1,065,743	-65,029	-5.75%
North Dakota	249,043	251,544	2,501	1.00%
Ohio	1,117,759	1,036,012	-81,747	-7.31%
Oklahoma	359,867	375,320	15,453	4.29%
Oregon	693,724	624,878	-68,846	-9.92%
Pennsylvania	1,533,728	1,491,997	-41,731	-2.72%
Puerto Rico	552,030	493,458	-58,572	-10.61%
Rhode Island	324,158	315,605	-8,553	-2.64%
South Carolina	598,632	557,239	-41,393	-6.91%
South Dakota	242,398	242,778	380	0.16%
Tennessee	802,674	759,581	-43,093	-5.37%
Texas	1,328,284	1,481,573	153,289	11.54%
Utah	353,123	369,704	16,581	4.70%
Vermont	270,972	277,479	6,507	2.40%
Virgin Islands	218,831	223,016	4,185	1.91%
Virginia	556,355	614,647	58,292	10.48%
Washington	865,776	875,996	10,220	1.18%
West Virginia	353,579	337,465	-16,114	-4.56%
Wisconsin	1,020,775	945,365	-75,410	-7.39%
Wyoming	245,631	248,888	3,257	1.33%

Attachment VI

U. S. Department of Labor
Employment and Training Administration
Work Opportunity Tax Credit (WOTC) State Allotments
FY 2003 vs FY 2002

State	FY 2002	FY 2003	Difference	% Diff
Total	$21,000,000	$20,863,500	-$136,500	-0.65%
Alabama	335,460	321,489	-13,971	-4.16%
Alaska	64,000	65,120	1,120	1.75%
Arizona	314,972	301,854	-13,118	-4.16%
Arkansas	366,051	350,806	-15,245	-4.16%
California	2,362,490	2,264,101	-98,389	-4.16%
Colorado	196,566	188,380	-8,186	-4.16%
Connecticut	304,074	291,411	-12,663	-4.16%
Delaware	65,980	65,120	-860	-1.30%
Dist of Columbia	80,561	77,206	-3,355	-4.16%
Florida	725,126	694,927	-30,199	-4.16%
Georgia	589,171	564,634	-24,537	-4.16%
Hawaii	80,561	77,206	-3,355	-4.16%
Idaho	64,000	65,120	1,120	1.75%
Illinois	1,072,496	1,027,830	-44,666	-4.16%
Indiana	396,241	479,670	83,429	21.06%
Iowa	233,874	283,116	49,242	21.05%
Kansas	150,429	144,164	-6,265	-4.16%
Kentucky	305,651	292,922	-12,729	-4.16%
Louisiana	513,185	491,813	-21,372	-4.16%
Maine	73,912	89,474	15,562	21.05%
Maryland	497,076	476,375	-20,701	-4.16%
Massachusetts	447,458	428,823	-18,635	-4.16%
Michigan	730,907	700,467	-30,440	-4.16%
Minnesota	329,459	398,828	69,369	21.06%
Mississippi	174,152	210,820	36,668	21.06%
Missouri	493,618	473,061	-20,557	-4.16%
Montana	64,000	65,120	1,120	1.75%
Nebraska	129,759	124,355	-5,404	-4.16%
Nevada	109,630	132,713	23,083	21.06%
New Hampshire	80,561	77,206	-3,355	-4.16%
New Jersey	604,103	578,944	-25,159	-4.16%
New Mexico	164,557	199,205	34,648	21.06%
New York	1,298,675	1,244,590	-54,085	-4.16%
North Carolina	540,918	518,391	-22,527	-4.16%
North Dakota	64,000	65,120	1,120	1.75%
Ohio	948,747	909,235	-39,512	-4.16%
Oklahoma	164,300	198,893	34,593	21.05%
Oregon	242,717	232,609	-10,108	-4.16%
Pennsylvania	1,047,124	1,003,515	-43,609	-4.16%
Puerto Rico	122,166	147,888	25,722	21.05%
Rhode Island	80,561	97,524	16,963	21.06%
South Carolina	211,607	256,161	44,554	21.06%
South Dakota	64,000	65,120	1,120	1.75%
Tennessee	508,623	615,714	107,091	21.06%
Texas	1,290,686	1,236,934	-53,752	-4.16%
Utah	90,329	86,567	-3,762	-4.16%
Vermont	64,000	65,120	1,120	1.75%
Virginia	480,004	460,013	-19,991	-4.16%
Washington	485,815	465,582	-20,233	-4.16%
West Virginia	142,752	136,807	-5,945	-4.16%
Wisconsin	402,896	386,117	-16,779	-4.16%
Wyoming	64,000	65,120	1,120	1.75%
State Total	20,434,000	20,259,300	-174,700	-0.85%
Virgin Islands	20,000	20,000	0	0.00%
Postage	546,000	584,200	38,200	7.00%

[FR Doc. 03–7737 Filed 3–31–03; 8:45 am]

BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–035)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that SeatSignal, Incorporated, of Atlanta, Georgia, has applied for an exclusive license to practice the invention described in NASA Case Numbers LAR 16324–1 and LAR 16324–1–PCT entitled ''Self-Activating System And Method For Alerting When An Object Or A Person Is Left Unattended,'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199. Voicemail: 757–864–2470, Facsimile: 757–864–9190.

Dated: March 25, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–7757 Filed 3–31–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of March 31, April 7, 14, 21, 28, May 5, 2003.

AGENCY: Nuclear Regulatory Commission.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 31, 2003

There are no meetings scheduled for the Week of March 31, 2003.

Week of April 7, 2003–Tentative

Friday, April 11, 2003

9 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

12:30 p.m. Discussion of Management Issues (Closed—Ex. 2)

Week of April 14, 2003—Tentative

There are no meetings scheduled for the Week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni, (301) 415–1651.

Additional Information

By a vote of 5–0 on march 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Final Rule: part 2, subpart G, rules of General Applicability, 'Availability of Official Records' '' be held on March 27, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 27, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–7921 Filed 3–28–03; 11:43 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 7, 2003 through March 20, 2003. The last biweekly notice was published on March 18, 2003 (68 FR 12946).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 1, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.*

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text to 10 CFR 2.714(d), please *see* 67 FR 20884; April 29, 2002.

A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 10, 2002, as supplemented March 12, 2003.

Description of amendment request: Carolina Power & Light Company (the licensee) is proposing changes to Appendix A, Technical Specifications (TS), and appendix B, Additional Conditions, of Facility Operating License No. DPR–23 for the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2). These changes will revise the licensing basis for HBRSEP2 to implement the Alternative Source Term (AST) described in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' Implementation of the AST will allow for removal of the cycle operating length restriction from appendix B, Additional Conditions, of the Operating License, as the AST radiological consequence analyses support operation for an entire cycle at the increased power level approved in License Amendment No. 196. The AST is used by the licensee in evaluating the radiological consequences of the following Updated Final Safety Analysis Report Chapter 15 accidents:

- Main Steam Line Break,
- Reactor Coolant Pump Shaft Seizure,
- Single Rod Control Cluster Assembly Withdrawal,
- Steam Generator Tube Rupture,
- Large Break Loss-of-Coolant Accident, and
- Waste Gas Decay Tank Rupture.

In addition, revised atmospheric dispersion factors for onsite and offsite dose consequences have been calculated and incorporated in the reanalysis of these events.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Implementation of the Alternative Source Term does not affect the design or operation of HBRSEP, Unit No. 2. Rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences of the postulated accident. The implementation of the Alternative Source Term has been evaluated in revisions to limiting design basis accidents at HBRSEP, Unit No. 2. Based on the results of these analyses, it has been demonstrated that, with the requested changes to the Technical Specifications, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC. This guidance is presented in 10 CFR 50.67 and Regulatory Guide 1.183. The proposed Technical Specifications changes result in more restrictive requirements and support the revisions to the limiting design basis accident analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed changes do not affect plant structures, systems or components. The Alternative Source Term and those plant systems affected by implementing the proposed changes do not initiate design basis accidents.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes are associated with the implementation of a new licensing basis for HBRSEP, Unit No. 2. The new licensing basis implements an Alternative Source Term in accordance with 10 CFR 50.67 and the associated Regulatory Guide 1.183. The results of the revised limiting design basis analyses are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies in accordance with the regulatory guidance. The dose consequences of the limiting design basis events are within the acceptance criteria found in the regulatory guidance associated with Alternative Source Terms.

The proposed changes continue to ensure that doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Specifically, the margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are conservatively set below the 10 CFR 50.67 limits. With respect to control room personnel doses, the margin of safety (the difference between the 10 CFR 50.67 limits and the regulatory limits defined by 10 CFR 50, Appendix A, [General Design] Criterion 19 (GDC–19)) continues to be satisfied.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above discussion, Progress Energy Carolinas, Inc., also known as Carolina Power and Light Company, has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602–1551.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 17, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specification Surveillance Requirement 3.10.1.9 to require that the Standby Shutdown Facility (SSF) diesel generator (DG) be loaded to at least 3280 kilowatts during the surveillance. The current requirement is that the SSF DG be loaded to at least 3000 kilowatts during the surveillance. The change supports resolution of an Oconee design basis issue associated with SSF pressurizer heater capacity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

This change revises the loading of the Standby Shutdown Facility (SSF) Diesel Generators (DG) to ≥ 3280 kW. The design rating of the DG is currently 3500 kW. Since the proposed loading is within the design rating already evaluated, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

As stated above, the proposed revision revises the DG loading to an analytical value that is within the equipment's design limit. Applicable load and support system calculations have been revised and results have shown that the increase does not adversely affect the ability of the SSF diesel generator or SSF to perform its intended safety function. Additionally, this change is bounded by all of the existing accidents and does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS) 3.4.11, ''RCS Pressure and Temperature (P/T) Limits,'' to incorporate revised P/T curves. The revised P/T curves are based on calculations performed in accordance with General Electric (GE) Topical Report NEDC–32983P, ''General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation.'' The NEDC–32983P methodology is consistent with the guidance contained in Regulatory Guide (RG) 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' dated March 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes request for LaSalle County Station, Units 1 and 2, that the pressure and temperature (P/T) limit curves in TS 3.4.11, ''RCS Pressure and Temperature (P/T) Limits,'' and Surveillance Requirement (SR) 3.4.11.1 and SR 3.4.11.2 be revised. The revised curves were developed using the methodology of GE Topical Report NEDC–32983P, ''General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation.'' NEDC–32983P methodology has been previously approved by the NRC for use by licensees. The P/T limits are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary, a condition that is unanalyzed. Thus, the proposed changes do not have any affect on the probability of an accident previously evaluated.

The P/T curves are used as operational limits during heatup or cooldown maneuvering, when pressure and temperature indications are monitored and compared to the applicable curve to determine that operation is within the allowable region. The P/T curves provide assurance that station operation is consistent with previously evaluated accidents. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not change the response of plant equipment to transient conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes adopt P/T curves that have been developed using the methodology of GE Topical Report NEDC–32983P. The NEDC–32983P methodology is consistent with the guidance contained in RG 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' dated March 2001. In a letter dated September 14, 2001, the NRC approved NEDC–32983P for use by licensees.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief : Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 27, 2003.

Description of amendment request: The proposed amendments revise the Technical Specifications to reflect a one-time deferral of the primary containment Type A leak rate test to no later than July 22, 2009, for Unit 1 and no later than May 16, 2008, for Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Technical Specification (TS) 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to no later than July 22, 2009, for Unit 1, and no later than May 16, 2008, for Unit 2. The current Type A test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test.

The function of the primary containment is to isolate and contain fission products released from the reactor coolant system (RCS) following a design basis loss of coolant accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A testing is not a precursor of any accident previously evaluated. Therefore, extending this test interval on a one-time basis from 10 years to 15 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of Type A testing provides assurance that the QCNPS primary containments will not exceed allowable leakage rate values specified in the TS and will continue to perform their design function following an accident. The risk assessment of the proposed change has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change for a one-time extension of the Type A tests for QCNPS, Units 1 and 2, will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed change does not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

QCNPS, Units 1 and 2, are General Electric BWR/3 [boiling water reactor class 3] plants with Mark I primary containments. The Mark I primary containment consists of a drywell, which encloses the reactor vessel, reactor coolant recirculation system, and branch lines of the RCS; a toroidal-shaped pressure suppression chamber containing a large volume of water; and a vent system connecting the drywell to the water space of the suppression chamber. The primary containment is penetrated by access, piping, and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed change for a one-time extension of the Type A tests do not affect the method for Type A, B, or C testing, or the test acceptance criteria. In addition, based on previous Type A testing results, EGC [Exelon Generation Company, LLC] does not expect additional degradation, during the extended period between Type A tests, which would result in a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 27, 2003.

Description of amendment request: The proposed amendments add a surveillance requirement to perform a quarterly trip unit calibration of the reactor protection system scram discharge volume water level—high differential pressure switches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specifications (TS) change adds a trip unit calibration surveillance requirement (SR) for the analog trip units associated with the Scram Discharge Volume (SDV) Water Level—High Trip Function for the Reactor Protection System (RPS) Instrumentation. Specifically, SR 3.3.1.1.11 is added to Function 7.b of TS Table 3.3.1.1–1, ''Reactor Protection System Instrumentation.'' In addition, the proposed change revises Function 7.a of TS Table 3.3.1.1–1 to delete a reference to thermal switches, applicable to Unit 1 through cycle 17. The change to Function 7.a is editorial, since Unit 1 SDV level instrumentation has been upgraded to replace Fluid Components International thermal switches with Magnetrol float switches.

TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these proposed changes will not involve an increase in the probability of an accident previously evaluated. Additionally, these proposed changes do not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. The proposed changes establish requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no change being made to the parameters within which Quad Cities Nuclear Power Station (QCNPS) is operated. The proposed changes do not adversely impact the manner in which the SDV Water Level—High RPS instrumentation will operate under normal and abnormal operating conditions. The proposed changes will not alter the function demands on credited equipment. No alteration in the procedures, which ensure QCNPS remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Therefore, these proposed changes provide an equivalent level of safety and will not create the possibility of a new or different

kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety[?]

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed changes do not affect the probability of failure or availability of the affected instrumentation, and the proposed changes do not revise any allowable values for RPS functions. Therefore, it is concluded that the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: January 14, 2003.

Description of amendment request: This license amendment request proposes a change to Technical Specifications (TSs) 5.1.1, 5.4.1, and 5.5.1 that would replace the requirement for the plant manager to approve administrative procedures and the Offsite Dose Calculation Manual. The plant manager approval signature would be replaced with the signature of a procedurally authorized individual who would be a more appropriate authority for approval of the activity.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (10 CFR), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to replace the plant manager's approval with the approval by an authorized individual is consistent with the requirements of Regulatory Guide 1.33 and American National Standards Institute (ANSI) N18.7–1976/American Nuclear Society (ANS) 3.2. The authorized individuals are management and supervisory personnel who satisfy the requirements of ANSI N18.1–1971. Use of ANSI N18.1–1971 is consistent with the requirements of the existing TS and Updated Safety Analysis Report (USAR). The change is administrative and does not impact or otherwise affect the physical plant.

The proposed change to the License Condition to delete the reporting time frame eliminates duplication of a requirement that is already an integral part of 10 CFR 50.73 which is referenced in the License Condition. The proposed change is administrative and does not impact or otherwise affect the physical plant.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed administrative changes do not involve any physical modifications to the facility nor add new equipment. The methods of plant operation have not been altered. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and have no direct impact upon any plant safety analyses. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant (PNPP), Unit 1, Lake County, Ohio

Date of amendment request: January 30, 2003.

Description of amendment request: This license amendment request would modify the existing minimum critical power ratio (MCPR) safety limit contained in Technical Specification (TS) 2.1.1.2. Specifically, the change modifies the MCPR safety limit values, as calculated by Global Nuclear Fuel (GNF), by decreasing the limit for two recirculation loop operation from 1.10 to 1.07, and decreasing the limit for single recirculation loop operation from 1.11 to 1.08. The change resulted from the core reload analysis performed for the Perry Nuclear Power Plant (PNPP) fuel cycle 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PPNP Updated Safety Analysis Report (USAR) Section 4.2, ''Fuel System Design,'' states the PNPP fuel system design bases are provided in the General Electric Topical Report, NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel (GESTAR II).'' The MCPR Safety Limit is one of the limits used to protect the fuel in accordance with the design basis. The MCPR Safety Limit establishes a margin to the onset of transition boiling. The basis of the MCPR Safety Limit remains the same, ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling. The methodology used to determine the MCPR Safety Limit values is contained within GESTAR II and is NRC approved. The change does not result in any physical plant modifications or physically affect any plant components. As a result, there is no increase in the probability of occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The Safety Limit MCPR is established to avoid fuel damage in response to anticipated operational occurrences. Compliance with a MCPR Safety Limit greater than or equal to the calculated value will ensure that less than 0.1% of the fuel rods will experience boiling transition. This in turn ensures fuel damage does not occur following transitions due to excessive thermal stresses on the fuel cladding. The MCPR Operating Limits are set higher (*i.e.*, more conservative) than the Safety Limit such that potentially limiting plant transients prevent the MCPR from decreasing below the MCPR Safety Limit during the transient. Therefore, there is no impact on any limiting USAR Appendix 15B transients. The radiological consequences remain the same as previously stated in the USAR. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit basis is preserved, which is to ensure that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. The values are calculated in accordance with GESTAR II. The GESTAR II analyses have been accepted by the NRC.

The MCPR Safety Limit is one of the limits established to ensure the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. No changes in the design of the plant or the method of operating the plant are associated with these revised safety limit values. Therefore, no new or different kind of accident from any previously evaluated is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change revises the PNPP MCPR Safety Limit values. The new MCPR Safety Limit values reflect changes due to the Cycle 10 core reload, but do not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit values were calculated using NRC-approved methods described in GESTAR II. The proposed MCPR Safety Limit values continue to satisfy the fuel design safety criteria which ensures that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. Therefore, the proposed values for the MCPR Safety Limit do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: December 10, 2002.

Description of amendment request: The proposed amendment would revise the Unit 2 reactor coolant system (RCS) pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate. In support of this proposed amendment, Indiana Michigan Power (I&M) has submitted a request, in accordance with 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' for exemption from requirements in 10 CFR Part 50, Appendix G, ''Fracture Toughness Requirements.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed change will revise the RCS pressure-temperature curves to reflect new limiting reactor vessel materials, to bound operation of the reactor up to 3600 MWt for the current fuel cycle and beyond, to reflect new fluence analysis methodology, to reflect the use of ASME [American Society of Mechanical Engineers] Code Case N–641, to include boltup limits, and to no longer include instrument uncertainty margins.

The proposed change will not result in physical changes to structures, systems, or components (SSCs), or changes to event initiators or precursors. The proposed change will not affect the ability of personnel to control RCS pressure at low temperatures and, thereby, ensure the integrity of the reactor coolant pressure boundary. Use of Code Case N–641 in developing the proposed revision to the RCS pressure-temperature curves is in accordance with methodologies accepted by the ASME. These methodologies provide assurance that the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes, and provide an acceptable level of protection against brittle failure.

Additionally, the proposed changes will not impact the design or operation of plant systems such that previously analyzed SSCs will be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR [updated final safety analysis report] will remain as previously analyzed. Therefore, the proposed changes will not involve a significant increase in the probability of an accident previously evaluated.

Consequences of an Accident Previously Evaluated

The proposed change does not reduce the ability of any SSC to limit the radiological consequences of accidents described in the UFSAR. The proposed change will not alter any assumptions made in the analysis of radiological consequences of previously evaluated accidents, nor does it affect the ability to mitigate these consequences. No new or different radiological source terms will be generated as a result of the proposed change. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

The format changes will improve the appearance of the affected pages but will not affect any requirements. In summary, the probability of occurrence and the consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not result in physical changes to SSCs. The proposed change will not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor will it alter the design of any plant systems. The proposed change solely involves RCS pressure-temperature limits. The types of potential accidents associated with these limits have been previously identified and evaluated. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or single failures will be introduced as a result of the proposed changes. No new or different modes of failure will be created. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed RCS pressure-temperature curves will continue to provide adequate margins of protection for the reactor coolant pressure boundary. The proposed changes have been determined, through supporting analyses, to be in accordance with the methodologies and criteria set forth in the applicable regulations, or in accordance with technically adequate alternatives. Compliance with these methodologies provides adequate margins of safety and ensures that the reactor coolant pressure boundary will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events as described in the UFSAR. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 25, 2003.

Description of amendment request: The proposed Technical Specification

(TS) changes will add an allowed outage time (AOT) for Engineered Safety Features Actuation System (ESFAS) Instrumentation channels to be out of service in a bypassed state.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of an ACTION STATEMENT and the addition of an AOT (and its associated actions if not met) for a TS action statement are neither an accident initiator nor precursor. The ESFAS actuates in response to an accident and has a mitigating function. Increasing the TS requirements for specific TS instrument loops provides additional assurance that the channels will be capable of performing their design function in the event of a DBA [design-basis accident]. The ability of the operations staff to respond to an evaluated accident or plant transient will not be hampered. This change provides conservative requirements to assure that the design basis of the plant is maintained.

Addition of conservative changes to the Engineered Safety Feature Actuation System Instrumentation does not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

- The changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–1431, Rev. 2. There are no deletions from the Technical Specifications made by these changes, nor relaxation in any applicability, action, or surveillance requirements.
- Overall plant performance and operation is not altered by the proposed changes. There are to be no plant hardware changes as a result of this proposed change and only minimal procedural changes.

Therefore, since the Engineered Safety Feature Actuation System Instrumentation are treated more conservatively, the probability of occurrence or consequences of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. Additionally, the addition of an ACTION STATEMENT and an AOT with conservative requirements are intended to assure that the plant is in a safe configuration and can meet accident analyses assumptions. These changes are conservative and consistent with the Improved Technical Specifications, NUREG–1431, Rev. 2. No new accident initiator mechanisms are introduced since:

- No physical changes to the Engineered Safety Feature Actuation System Instrumentation are made.
- No deletions from the Technical Specifications are made.
- No relaxations in any applicability, action, or surveillance requirements are made.

Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed, which determine safe plant operation.

3. Does this change involve a significant reduction in margin of safety?

The proposed change requires that an instrument channel for an Engineered Safety Feature remain operable or be restored to operability within a reasonable time period, otherwise a controlled shutdown is required. This conforms to the safety analysis where the plant and its systems, structures and components must be capable of performing the safety function while a DBA is occurring, in the presence of a worst case single failure.

This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–0452, Rev. 5. The proposed changes impose more restrictive operating limitations, and their use provides increased assurance that the Engineered Safety Feature Actuation System Instrumentation remains operable. Since the changes are conservative additions, it is concluded that the changes do not involve a significant reduction in the margin of safety. This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: February 13, 2003.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 4.2.1, Fuel Assemblies, to modify the fuel design description to encompass Framatome Advanced Nuclear Power (FANP) fuel assemblies and also to modifiy TS 4.3, Fuel Storage, to remove nomenclature specific to Global Nuclear Fuels analysis methods. The proposed TS changes are needed to allow the receipt and storage of Framatome fuel assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment revises TS 4.2.1, Fuel Assemblies, to modify the fuel design description to accommodate FANP fuel designs. The change to TS 4.2.1 is administrative and simply adds descriptive text to reflect that FANP fuel assemblies have a water channel.

To make the fuel storage TS compatible with the storage of GNF [Global Nuclear Fuels] and FANP fuel, the proposed amendment also modifies TS 4.3, Fuel Storage, to delete criteria specific to GNF fuel storage criticality analysis methods. BFN criticality analysis and storage requirements continue to be adequately described in the Updated Final Safety Analysis Report (UFSAR) and in existing TS 4.3.1.1.b, TS 4.3.1.1.c, TS 4.3.1.2.b, 4.3.1.2.c, and 4.3.1.2.d. Hence, the proposed elimination of the GNF-specific criteria in TS 4.3 does not affect BFN design basis requirements associated with ensuring adequate criticality margins are maintained for fuel storage.

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability, performance, or the possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect accident mitigation systems, and do not introduce any new accident initiation methods. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to TS do not affect the performance of any BFN structure,

system, or component credited with mitigating any accident previously evaluated. Fuel storage criticality analyses will continue to be performed in accordance with established UFSAR commitments that are independent are fuel vendor specific methods. The TS changes do not introduce new modes of operation or involve plant modifications.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed amendment modifies TS 4.3, Fuel Storage, to remove nomenclature specific to GNF criticality analysis methods. Fuel storage criticality analyses will continue to be performed in accordance with UFSAR commitments and the remaining TS commitments in accordance with FANP accepted methods, which specify appropriate criteria and conservatisms. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Chapter 5.0, ''Administrative Controls,'' to incorporate three approved TS Task Force (TSTF) changes: TSTF–258, Revision 4; TSTF–299, Revision 0; and TSTF–308, Revision 1. These changes have been incorporated in Revision 2 of NUREG 1431, ''Standard Technical Specifications Westinghouse Plants.''

In addition, the amendment proposes two editorial changes. These changes either update personnel titles with the titles currently used at WBN and TVA's other nuclear units or clarify required staffing levels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

1. Does the proposed change involve a significant increase in the probability of consequences of an accident previously evaluated?

No. The proposed changes affect only administrative requirements or programs. As indicated below, the justification for five of the changes (Parts 2 through 4 of Change Number 2 and Change Numbers 3, 5 [only Parts 1 and 2 of Change 5], 6, and 7) is based on the existence of a regulation or other regulatory document which controls the administrative requirements. For these changes, the proposed amendment modifies the administrative TS to make it consistent with the current regulations or NRC guidance document. Two changes (Change Number 1 and Part 1 of Change Number 2) are strictly editorial. In addition, two changes (Change Number 4 and Part 3 of Change Number 5) add a requirement to make the program consistent with the criteria for Surveillance Requirements in the Improved Standard Technical Specifications (ISTS). Based on the preceding information, the proposed amendment does not involve technical changes to the configuration or operation of the plant there is not a significant increase in the probability or consequences of an accident previously evaluated:

Change No.	Administrative section affected	Justification for the change
1.	5.1, ''Responsibility,'' Section 5.1.2	Editorial update of staff titles.
2.	5.2.2, ''Unit Staff''	Part 1 of Change number 2—Editorial clarification of the number of non-licensed operators required for the operation of WBN Unit 1. Parts 2 through 4 of Change Number 2—The existing administrative requirements are revised to align the requirements with 10 CFR 50.54.
3.	5.3, ''Unit Staff Qualifications,'' Section 5.3.2.	Adds TS 5.3.2 which clarifies the ''Operator'' and ''Senior Operator'' definitions in 10 CFR 55.4 and ties these positions to the requirements of 10 CFR 50.54.
4.	5.7.2.4, ''Primary Coolant Sources Outside Containment.	WBN TS 5.7.2.4 serves the same function as a Surveillance Requirement (SR). The proposed change structures TS 5.7.2.4 so that it is consistent with other ISTS SRs and the frequency extension allowed by SR 3.0.2.
5.	5.7.2.7, ''Radioactive Effluent Controls Program''.	The intent of the revisions to this TS are to: 1) eliminate possible confusion or improper implementation of the requirements of 10 CFR 20; 2) clarifies the wording to not require dose projections for a calendar quarter and a calendar year every 31 days; 3) structures the TS so that it is consistent with other ISTS SRs.
6.	5.9.4, ''Monthly Operating Reports''	The proposed change makes the TS reporting requirements consistent with the reporting requirements in Generic Letter 97–02.
7.	5.11, ''High Radiation Area''	The proposed revision updates the TS to be consistent with 10 CFR 20.1601(c) and updates the acceptable alternate controls to those given in 10 CFR 20.1601.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As indicated above, the proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods controlling normal plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes will not reduce the margin of safety because they have no effect on assumptions made in WBN's safety analysis or the configuration of plant equipment important to safety. Additionally, several of the proposed revisions adjust the administrative requirements to be consistent with existing regulations or NRC guidance documents and therefore, will not adversely impact plant safety. The balance of the proposed changes are editorial updates or adjust a program to be consistent with the ISTS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: February 14, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Watts Bar Nuclear Plant (WBN), Unit 1. The proposed TS change would allow WBN Unit 1 to be refueled and operated using the Westinghouse 17x17 Robust Fuel Assembly-2 (RFA–2) design commencing with Cycle 6 in September 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The Loss of Coolant Accident (LOCA) and non-LOCA transients and accidents which are potentially affected by the parameters and assumptions associated with the use of RFA–2 (including the effects of Tritium Producing Burnable Absorber Rods, TPBARs) have been evaluated/analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design material, and construction standards that were applicable prior to the change are altered. Therefore, the changes occurring with the use of RFA–2 will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The changes associated with the use of RFA–2 do not affect plant systems such that their function in the control of radiological consequences is adversely affected. TVA's evaluation documents that the design standards and applicable safety criteria limits continue to be met and, therefore, fission barrier integrity is not challenged. The fuel rod design (the first fission product barrier) is not changed. Compared to the current grid design on the resident fuel, the RFA–2 grid design provides improved resistance to fuel rod fretting. The RFA–2 fuel changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. These changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Final Safety Analysis Report (FSAR).

Therefore, since the actual plant configuration, performance of systems, and initiating event mechanisms are not being changed as a result of this evaluation, TVA has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with the use of RFA–2 do not result in a change to the design basis of any plant component or system. The evaluation of the effects of the use of RFA–2 shows that all design standards and applicable safety criteria limits are met. Specifically, the results of the evaluations/analyses lead to the following conclusions:

1. The RFA–2 fuel design for Watts Bar Unit 1 is mechanically compatible with the current fuel assemblies, core components, the control rods and the reactor internals interfaces.

2. The structural integrity of the RFA–2 fuel design has been evaluated for seismic/LOCA loadings for Watts Bar Unit 1. Evaluation of the RFA–2 fuel assembly component stresses and grid impact forces due to postulated faulted condition accidents verified that the fuel assembly design is structurally acceptable.

3. The changes to the nuclear characteristics due to the transition to the RFA–2 fuel assembly design will be within the range normally seen from cycle to cycle due to fuel management.

4. The RFA–2 fuel assembly design is hydraulically compatible with the current fuel assemblies.

5. The core design and safety analyses documented in this report demonstrate the capability of the core to operate safely at the rated Watts Bar Unit 1 design thermal power with either a mixed core of RFA–2 fuel and the current fuel product or with a full core of RFA–2 fuel.

6. TVA's amendment request establishes a reference upon which to base Westinghouse reload safety evaluations for future reloads with the RFA–2 fuel assembly design.

7. Reload core designs with either a mixed core of RFA–2 fuel and the current fuel product or with a full core of RFA–2 fuel are compatible with the planned introduction of Tritium-Producing Burnable Absorber Rods (TPBARs) into Watts Bar Unit 1.

These changes therefore do not cause the initiation of any accident nor create any new failure mechanisms. All equipment important to safety will operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The use of RFA–2 is not expected to result in more adverse conditions and is not expected to result in any increase in the challenges to safety systems.

Therefore, TVA concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. All of the appropriate acceptance criteria for the various analyses and evaluations have been met, therefore, there has not been a reduction in any margin of safety.

Therefore, TVA concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 10, 2002.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to relocate emergency diesel generator maintenance inspection requirements from Section 4.7 to the Updated Final Safety Analysis Report.

Date of Issuance: March 7, 2003.

Effective date: March 7, 2003 shall be implemented within 30 days of issuance, except the relocation of the emergency diesel generator maintenance requirements of Technical Specification 4.7, which shall be incorporated into the Updated Final Safety Analysis Report in accordance with the schedule specified by 10 CFR 50.71.

Amendment No.: 236.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 28, 2002 (67 FR 36926).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 30, 2002, as supplemented November 21 and December 16, 2002, and January 23, 2003.

Brief description of amendment: This amendment revises the Technical Specifications by eliminating the requirements to perform response time testing for several reactor protection system and engineered safety feature functions in conformance with previously approved topical reports.

Date of issuance: March 7, 2003.

Effective date: March 7, 2003.

Amendment No.: 112.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 1, 2002 (67 FR 61676).

The November 21 and December 16, 2002, and January 23, 2003, letters provided clarifying information and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake and Chatham Counties, North Carolina

Date of application for amendment: August 28, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.9.9, ''Containment Ventilation Isolation System,'' to allow the same administrative controls for this TS as were approved previously by the NRC in Amendment No. 104 to the HNP TS for TS 3/4.9.4, ''Containment Building Penetrations,'' to provide consistency between the two TS.

Date of issuance: March 12, 2003.

Effective date: March 12, 2003.

Amendment No.: 113.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 1, 2002 (67 FR 61676).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendments: October 10, 2002, as supplemented by letters dated February 7 and February 26, 2003.

Brief description of amendments: The amendment authorizes the licensee to continue to use, for operational cycle 13 beginning in March 2003, and subsequent cycles of operation, the reactor coolant system cold leg elbow tap flow coefficients that were approved by the NRC on an interim basis for cycle 12 in Amendment No. 186.

Date of issuance: March 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 199.

Facility Operating License No. NPF–52: Amendment authorizes revision of the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register****:* November 26, 2002 (67 FR 70765).

The supplements dated February 7 and February 26, 2003, provided clarifying information that did not change the scope of the October 10, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 29, 2002, as supplemented by letters dated September 25 and November 12, 2002, and January 8 and January 29, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to allow a one-time change in the Appendix J, Type A containment integrated leakage rate test interval from the currently required 10-year interval to a test interval of 15 years.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 205/198.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 9, 2002 (67 FR 45563).

The supplements dated September 25 and November 12, 2002, and January 8 and January 29, 2003, provided clarifying information that did not change the scope of the May 29, 2002, application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: May 29, 2002, as supplemented by letters dated September 25 and

November 12, 2002, and January 8 and January 29, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to allow a one-time change in the Appendix J, Type A containment integrated leakage rate test interval from the currently required 10-year interval to a test interval of 15 years.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 211/192.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 9, 2002 (67 FR 45563).

The supplements dated September 25 and November 12, 2002, and January 8 and January 29, 2003, provided clarifying information that did not change the scope of the May 29, 2002, application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: April 24, 2002, as supplemented by letters dated July 18, December 18 and 20, 2002, and February 19, 2003.

Brief description of amendment: The amendment reflects a full-scope implementation of the alternative source term, as described in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' pursuant to 10 CFR 50.67, ''Accident source term.''

Date of issuance: March 14, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 132.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 11, 2002 (67 FR 40021).

The July 18, December 18 and 20, 2002, and February 19, 2003, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letters dated February 12 and 28, 2003.

Brief description of amendment: The amendment modifies the surveillance requirements (SRs) pertaining to the testing of the Division 3 standby emergency diesel generator (EDG). The change allows performance of some required surveillance tests for the Division 3 EDG during any mode of plant operation (previously allowed only in Modes 4 (Cold Shutdown) and 5 (Refueling)).

Date of issuance: March 14, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 133.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications and Surveillance Requirements.

*Date of initial notice in **Federal Register**:* June 25, 2002 (67 FR 42824).

The February 12, 2003, supplemental letter provided clarifying information and the February 28, 2003, supplemental letter withdrew the requested change to the Note associated with SR 3.8.1.8. The supplemental letters did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 5, 2002, as supplemented on January 9 and March 4, 2003.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to implement the alternate source term methodology for the fuel-handling accident analysis. Specifically, the amendment revises TS 3.9.3, ''Containment Penetrations,'' to: (1) Permit the equipment closure hatch opening and the personnel airlock doors to be capable of being closed during movement of irradiated fuel, (2) allow use of administrative controls for unisolating containment penetrations during movement of irradiated fuel, (3) delete the containment purge and containment pressure relief requirements and associated surveillances with the reactor subcritical for less than 550 hours, and (4) eliminate the TS applicability ''during core alterations.'' In this regard, the amendment adopts TS Task Force (TSTF) Standard TS Change Travelers TSTF–68, ''Containment Personnel Airlock Doors Open During Fuel Movement,'' TSTF–312, ''Administratively Control Containment Penetrations,'' and, in part, TSTF–51, ''Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations.'' The amendment also revises the Applicability Statements for Limiting Condition for Operation (LCO) 3.3.8 for the fuel storage building emergency ventilation system (FSBEVS) actuation instrumentation and LCO 3.7.13 for the FSBEVS to also add the term ''recently'' before ''irradiated fuel assemblies.'' In addition, the LCO Required Action would likewise be modified to add the term ''recently'' to now require the suspension of movement of recently irradiated fuel in the FSB.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 215.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 9, 2002 (67 FR 45567).

The January 9 and March 4 letters provided clarifying information that did not expand the scope of the proposed amendment or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 16, 2002.

Brief description of amendment: The amendment relocates certain Control Rod Block functions from Technical Specifications 3/4.2.C, ''Control Rod Block Actuation,'' Tables 3.2.C.1, 3.2.C–2, and 4.2.C to the Updated Final Safety Analysis Report.

Date of issuance: March 17, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 196.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* November 12, 2002 (67 FR 68735).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 24, 2002, as supplemented by letter dated February 4, 2003.

Brief description of amendment: The amendment revises Technical Specifications (TSs) relating to positive reactivity additions while in shutdown modes by clarifying TSs involving positive reactivity additions. In addition, the borated water volume requirements in TS 3.1.2.7 is now presented in ''percent level'' units and an obsolete reference from Surveillance Requirement 4.8.2.2 is deleted.

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 185.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 10, 2002 (67 FR 75874).

The February 4, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 2, 2001, as supplemented by letters dated September 24, 2001, and February 27, July 31, and December 19, 2002.

Brief description of amendment: The Refueling Water Storage Pool (RWSP) purification system is aligned to the RWSP to maintain the purity and clarity of the borated water contained in the pool. It is also one of two means of makeup to the Spent Fuel Pool, with the Condensate Storage Pool being the primary makeup source. Entergy Operations Inc. has proposed to revise its Waterford Steam Electric Station, Unit 3, Updated Final Safety Analysis Report (UFSAR) to allow the manual valves (FS–423 and FS–404) that isolate the RWSP from the RWSP purification system and provide the boundary between the seismically qualified, safety related RWSP and the non-seismic, non-safety related RWSP purification system to be maintained open.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. NPF–38: The amendment revised the UFSAR.

*Date of initial notice in **Federal Register**:* May 16, 2001 (66 FR 27176).

The September 24, 2001, and February 27, July 31, and December 19, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments delete technical specification (TS) 5.5.3, ''Post Accident Sampling,'' and thereby eliminate the requirements to have and maintain the post accident sampling system at the Dresden Nuclear Power Station, Units 2 and 3. The amendments also address related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment.''

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 197/190.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 21, 2003 (68 FR 2802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: November 21, 2002, as supplemented February 25, 2003.

Brief description of amendment: This amendment revised the Technical Specifications (TSs) for the safety limit for the minimum critical power ratio from its current value of 1.09 to 1.07 for two recirculation-loop operations, and from 1.11 to 1.09 for single recirculation-loop operation.

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance, to be implemented prior to startup for Cycle 8 operations, scheduled for March 2003.

Amendment No.: 127.

Facility Operating License No. NPF–85: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 7, 2003 (68 FR 802). The February 25, 2003, letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on January 7, 2003 (68 FR 802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments delete technical specification (TS) 5.5.3, ''Post Accident Sampling,'' and thereby eliminate the requirements to have and maintain the post accident sampling system at the Quad Cities Nuclear Power Station, Units 1 and 2. The amendments also address related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment.''

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 212/206.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 21, 2003 (68 FR 2802)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: March 14, 2002, as supplemented by letters dated July 17 and September 12, 2002, and January 24, 2003.

Brief description of amendment: This amendment supplements License Amendment No. 100, which was issued on February 24, 1999, by placing restrictions on removing the inclined fuel transfer system (IFTS) blind flange during Operational Modes 1, 2, and 3. The amendment includes a time limit on the removal of the IFTS blind flange, provides a requirement to install the upper pool IFTS gate prior to IFTS blind flange removal, and limits the unbolted configuration of the IFTS blind flange when it is rotated.

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 123.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* February 4, 2003 (68 FR 5675).

The supplemental information contained clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: October 30, 2002.

Brief description of amendment: This amendment deletes Technical Specification (TS) 5.5.3, ''Post Accident Sampling System (PASS),'' and thereby eliminates the requirements to have and maintain the PASS at the Perry Nuclear Power Plant, Unit 1. The amendment also addresses related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment.''

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 124.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 21, 2003 (68 FR 2803).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: November 14, 2002, supplemented by a letter dated January 24, 2003, that supersedes previous applications dated August 9, 2000, June 13, 2002.

Brief description of amendment request: The amendment revises TS 6.5.4 and 6.5.3 to eliminate the requirements for the Independent Onsite Safety Review Group (IOSRG) which is not needed for safe monitoring of TMI–2 based on consideration that the reactor has been defueled to the extent reasonably achievable and the fuel shipped offsite. The amendment also revises TS 6.4 to delete the requirements for unit staff training that are outdated based on the adoption of a systems approach to training consistent with 10 CFR 50.120, ''Training and Qualification of Nuclear Power Plant Personnel.''

Date of issuance: March 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 59.

Facility Operating License No. DPR–73: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50955).

The November 14, 2002, application and supplemental letter dated January 24, 2003, replace in their entirety the previous applications dated August 9, 2000, June 13, 2002. The November 14, 2002, application supplemented by the January 24, 2003, letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 5, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: July 23, 2002, as supplemented November 15, 2002, and January 24, 2003.

Brief description of amendment: The amendment revises the Unit 2 reactor coolant system pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate.

Date of issuance: March 20, 2003.

Effective date: As of the date of issuance and shall be implemented prior to startup from Unit 2 refueling outage 14.

Amendment No.: 255.

Facility Operating License No. DPR–74: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66010).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2003.

No significant hazards consideration comments received: No.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 13, 2000, and supplemented by letters dated June 1, 2001, August 13, 2001, and October 15, 2002.

Brief description of amendment: The amendment adds License Condition 2.B.(9) to the MY license. This new license condition incorporates the, Nuclear Regulatory Commission (NRC) approved, ''License Termination Plan Rev 3.'' (LTP), and associated addendum, into the MY license and allows the licensee to make certain changes to the approved LTP without prior NRC review and approval.

Date of issuance: February 28, 2003.

Effective date: Date of issuance; to be implemented within [30] days from the date of issuance.

Amendment No.: 168.

Facility Operating License No. DPR–36: The amendment adds License Condition 2.B.(9).

*Date of initial notice in **Federal Register:*** March 19, 2002.

The supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination published in the **Federal Register** on March 19, 2002.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation Report dated February 28, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 26, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of '' * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: March 6, 2003.

Effective date: March 6, 2003.

Amendment No.: 197.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 10, 2002 (67 FR 75882).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 15, 2002, as supplemented by letter dated February 24, 2003.

Brief description of amendment: The amendment revises the safety limit minimum critical power ratio values in Technical Specification 2.1.1.2.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 198.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 24, 2002 (67 FR 78521).

The supplemental letter provided clarifying information that was within the scope of the original **Federal Register** Notice (67 FR 78521) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 26, 2002, as supplmented December 19, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 1.0, ''Definitions,'' TS 2.1, ''Safety Limits, Reactor Core,'' TS 2.3, ''Limiting Safety System Settings, Protective Instrumentation,'' TS 3.1, ''Reactor Coolant System,'' TS 3.8, ''Refueling Operations,'' TS 3.10, ''Control Rod and Power Distribution Limits,'' TS 6.9, ''Reporting Requirements,'' and their associated Bases. These modifications allow the licensee to implement a Core Operating Limits Report (COLR) by relocating cycle-specific, reactor coolant system-related parameter limits from the TSs to the COLR. In addition, the amendment makes administrative changes to the above TSs.

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 165.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 3, 2002 (67 FR 56322).

The supplemental information dated December 19, 2002, contained clarifying information and did not change the scope of the July 26, 2002, application nor the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: March 19, 2002, supplemented by letters dated September 13 and October 21, 2002.

Brief description of amendment: The amendment revises the current radiological consequence analyses for the Kewaunee Nuclear Power Plant (KNPP) design-basis accidents to implement the alternate source term (AST) as described in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'' and Pursuant to 10 CFR 50.67, ''Accident Source Term.''

Date of issuance: March 17, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 166.

Facility Operating License No. DPR–43: Amendment revised the current radiological consequence analyses for the KNPP design-basis accidents to implement the AST.

*Date of initial notice in **Federal Register:*** April 16, 2002 (67 FR 18646).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 4, 2002, as supplemented January 9, 2003.

Brief description of amendment: The amendment adds a limiting condition for operation of the mechanical vacuum pump instrumentation to trip the pumps on indication of high radiation levels in the main steam line and adds associated Surveillance Requirements.

Date of issuance: March 11, 2003.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 143.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 19, 2002 (67 FR 7421).

The January 9, 2003, supplement contained clarifying information and

did not change the staff's proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 20, 2002.

Brief description of amendment: The amendment modifies the diesel generator action statements and surveillance requirements defined in the plant's Technical Specifications, in order to reduce degradation of the diesel generators associated with fast starting and rapid loading.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 144.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61684).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 20, 2002.

Brief description of amendment: The proposed amendment would change Technical Specification (TS) Section 1.10, ''Definitions, Dose Equivalent I–131,'' to allow the use of the thyroid dose conversion factors listed in the International Commission on Radiological Protection Publication No. 30 (ICRP–30), ''Limits for Intakes of Radionuclides by Workers,'' 1979, in determining the iodine-131 dose equivalent reactor coolant activity in TS Section 3/4.4.8 and in calculating the radiological consequences from postulated design basis accidents.

Date of issuance: March 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 162.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 9 2002, as supplemented by letters dated January 8 and February 6, 2003.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report to incorporate the Boiling Water Reactor Vessel and Internals Project Integrated Surveillance for the surveillance of the material capsules.

Date of issuance: March 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 237 and 179.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61684).

The supplements dated January 8 and February 6, 2003, provided clarifying information that did not change the scope of the August 9, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 10, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 24th day of March, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7489 Filed 3–31–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Patricia G. Norry, Deputy Executive Director for Management Services, Office of the Executive Director for Operations.

R. William Borchardt, Associate Director for Inspection and Programs, Office of Nuclear Reactor Regulation.

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.

Frank J. Congel, Director, Office of Enforcement.

James E. Dyer, Regional Administrator, Region III.

Jesse L. Funches, Chief Financial Officer.

Scott F. Newberry, Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

James B. Schaeffer, Director, Applications Development Division, Office of the Chief Information Officer.

Michael L. Springer, Director, Office of Administration.

Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards.

Michael F. Weber, Deputy Director, Office of Nuclear Security and Incident Response.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel.

William F. Kane, Deputy Executive Director for Reactor Programs, Office of the Executive Director for Operations.

Carl J. Paperiello, Deputy Executive Director for Materials, Research, and State Programs, Office of the Executive Director for Operations.

All appointments are made pursuant to section 4314 of chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2026.

Dated at Rockville, Maryland, this 17th day of March, 2003.

For the U.S. Nuclear Regulatory Commission.

Johanna P. Gallagher,

Secretary, Executive Resources Board.

[FR Doc. 03–7787 Filed 3–31–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities; Request For Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of three (3) standard forms, the SF–270, Request for Advance or Reimbursement; the SF–271, Outlay Report and Request for Reimbursement for Construction Programs; and the SF–LLL, Disclosure of Lobbying Activities. These forms are required by OMB Circulars A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' and A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

DATES: Comments must be submitted on or before June 2, 2003. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted to *ghatch@omb.eop.gov.* Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message. Due to problems receiving postal mail, mailed comments may not be received in a timely manner.

FOR FURTHER INFORMATION CONTACT: Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be downloaded from the OMB Grants Management Home page (*http://www.whitehouse.gov/WH/EOP/OMB/Grants*).

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance methods are not used. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0046.

Title: Disclosure of Lobbying Activities.

Form No: SF–LLL.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations, Individuals, Businesses.

Number of Responses: 300.

Estimated Time Per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.

Office of Management and Budget.

Joseph L. Kull,

Deputy Controller.

[FR Doc. 03–7718 Filed 3–31–03; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is extending the comment period regarding its draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations from April 3, 2003 to May 5, 2003. Chapter II of this draft Report requests comments from the public in three areas: (1) Guidelines for regulatory analysis; (2) Analysis and management of emerging risks; and (3) Improving analysis of regulations to homeland security.

DATES: Written comments regarding the Draft Report and the three specific areas are due by May 5, 2003.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft Report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov,* or faxed to (202) 395–7245. Comments on the OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C) should be e-mailed to *OIRA_ECON_GUIDE@omb.eop.gov,* or faxed, with the title ''Comments on Draft Guidelines'' identified in the transmittal page, to (202) 395–7245.

You may also submit comments to Lorraine Hunt, office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–3084.

SUPPLEMENTARY INFORMATION: On February 3, 2003 (68 FR 5492), OMB announced it was seeking comments on its Draft 2003 Report to Congress on the

Costs and Benefits of Federal Regulations by April 3, 2003. OMB is now extending that comment period to May 5, 2003. The Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations, including OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C), are posted on OMB's Web site, *http://www.whitehouse.gov/omb/inforeg/index.html.*

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 03–7717 Filed 3–31–03; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2 p.m. Thursday, April 17, 2003.

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the public at 2 p.m.

PURPOSE: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Monday, April 14, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate in an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, April 14, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: March 28, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–7884 Filed 3–28–03; 10:16 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25982; File No. 812–12923]

Huntington VA Funds, et al.; Notice of Application

March 26, 2003.

AGENCY: The Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

Applicants: Huntington VA Funds (the ''Trust'') and Huntington Asset Advisors, Inc. (''HAA'').

Summary of Application: Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which HAA or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator (''Future Trusts'') (the Trust, together with Future Trusts, are the ''Trusts'') to be sold to and held by: (a) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans (''Qualified Plans'') outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) HAA or certain related corporations (collectively ''HAA''); and (e) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

Filing Date: The application was filed on January 29, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Victor R. Siclari, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Alison White, 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 may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Massachusetts business trust. HAA is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment

adviser to the Trust. The Trust currently consists of six investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: Huntington VA Growth Fund, Huntington VA Income Equity Fund, Huntington VA Rotating Index Fund, Huntington VA Dividend Capture Fund, Huntington VA Mid Corp America Fund, and Huntington VA New Economy Fund (each, a ''Fund,'' and collectively, the ''Funds''). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as ''Funds'').

2. Shares of the Funds will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a ''Participating Insurance Company'') to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a ''Separate Account'' and collectively, the ''Separate Accounts''). Shares of the Portfolios may also be offered to Qualified Plans, HAA or certain related corporations (collectively ''HAA''), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Funds. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Trusts to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts and shares of any Future Trusts to be sold to and held by: (a) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (b) qualified plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) HAA or certain related corporations (collectively ''HAA''); and (e) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of 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.'' Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

3. The relief granted by rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. The relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible

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 or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Funds were sold only to Qualified Plans, exemptive relief under rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Funds' shares to Qualified Plans, to HAA, or General Accounts to result in a prohibition against, 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). However, because the relief under rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Qualified Plans, HAA or General Accounts. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Funds' shares were to be sold only to Qualified Plans, HAA, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under rule 6e–2 and rule 6e–3(T) would be unnecessary. The relief provided for under rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, HAA, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio 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).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Funds, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 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 sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, HAA and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations 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 contract owners with respect to the investments of an underlying fund, or any contract between such 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 Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). 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 its contract owners if the contract owners initiate any change 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), respectively, of rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes 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 expressly 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 contract owners 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, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. The sale of Fund shares to Qualified Plans, HAA and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified 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 Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified 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, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a 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 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. Similarly, HAA and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, HAA or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if HAA or an affiliate of HAA were to serve in the capacity of trustee or named fiduciary with voting responsibilities, HAA or the affiliates would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, 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 Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. 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. The purchase of shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as 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 contract owners. 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.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived 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 vehicle for Variable Contracts (including variable life contracts). 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 UIT that invests in a single fund or series, 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 UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Fund, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Fund.

22. 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. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is 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) under the

1940 Act permit. 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. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right 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 contract owner 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 contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

26. Each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. 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.

27. 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 those which would otherwise exist between variable annuity and variable life insurance contract owners. 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 contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate 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.

29. 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 such shares 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, the 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 Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

30. 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 Trusts. 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 relevant Fund at their respective net asset value in conformity with rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. There is analogous precedent for a situation in which the same funding vehicle was used for contract owners 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-term 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 Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds.

32. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, HAA and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Fund. Shares of a Fund that are held by HAA and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Fund. However, HAA and any General Account will vote their shares in such other manner as the Commission may require. 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 a Fund 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. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

33. Applicants reviewed whether a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, HAA or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Funds directly to Qualified Plans, HAA or a General Account does not create a senior security. ''Senior security'' is defined under section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, HAA, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees (the ''Board'') of the Trust will consist of persons who are not ''interested persons'' of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Trustee or Trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (e) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, 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 Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Fund), HAA, and any 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 Board. Participants will be responsible for assisting the 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 responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner 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 Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. 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 Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment vehicle including another Fund, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered

management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the 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 Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, HAA or an affiliate of HAA, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners 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 vehicle for the Qualified Plan if: (a) A majority of the Qualified 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 Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The 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. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission.

However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, 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 Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, HAA or any of its affiliates, and any General Account will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that HAA, any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 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 Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rules 6e–2 and 6e–3(T), or rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the 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 the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed

action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Qualified Plan executes an agreement with the Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan 1 or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7760 Filed 3–31–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47573; File No. SR–CBOE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Proposing To Extend the Rapid Opening System Pilot Program

March 26, 2003.

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 20, 2003, the Chicago Board Options Exchange, Inc., (''CBOE'' 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend the Rapid Opening System (''ROS'') pilot program until September 30, 2003 or such time as the Commission has approved ROS on a permanent basis.[3] The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rapid Opening System

Rule 6.2A

(a)–(c) No change.

(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [March 31, 2003] *September 30, 2003* on a pilot basis.

* * * Interpretation and Policies:

.01–.02 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of ROS.[4] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value. The ROS pilot program is due to expire on March 31, 2003.[5] The Exchange proposes to extend the ROS pilot until September 30, 2003 or such time as the Commission has approved ROS on a permanent basis.

The Exchange recently submitted a proposed rule filing to the Commission proposing permanent approval of ROS as well as an extension of the ROS pilot.[6] CBOE proposes an extension of the ROS pilot so that the pilot may continue to operate while the Commission considers the Exchange's request for permanent approval.

2. Statutory Basis

The CBOE believes that ROS has improved market efficiency for all market participants by successfully facilitating expedited openings of options classes on the Exchange during the pilot period. Therefore, CBOE 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),[8] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received written comments 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 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 the Exchange has designated the proposed rule change as one that 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, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The request to permanently approve ROS is being considered separately under SR–CBOE–2002–55.

[4] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (approving SR–CBOE–98–48). ROS is governed by CBOE Rule 6.2A.

[5] The Commission has extended the ROS pilot program four times. *See* Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot until September 30, 2000); 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot until September 30, 2001); 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot until September 30, 2002); and 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002) (extending the pilot until March 31, 2003).

[6] *See* SR–CBOE–2002–55.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

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.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to March 31, 2003 so that the ROS pilot program may continue without interruption after it would have otherwise expired on March 31, 2003. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to March 31, 2003.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–12 and should be submitted by April 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7759 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47569; File No. SR–FICC–2002–13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FICC's Schedule of Money Tolerances

March 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 20, 2002, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the schedule of money tolerances set forth in the rules of the Government Securities Division of FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The rules of the Government Securities Division of FICC contain a schedule of money tolerances (''Schedule'') that permits FICC, among other things, to compare a buy-sell trade with a discrepancy in its settlement amount of $1 per million in real time.[3] FICC is proposing to amend this tolerance to $2 per million in order to increase the intraday comparison rate of valid trades.

FICC has found that the current $1 tolerance on the settlement amount of buy-sell transactions results in increased risk. Specifically, FICC has found after conducting an analysis that many valid trades remain uncompared during the day and thus do not receive the benefit of FICC's guaranty. These trades eventually compare at end of day, when the applicable tolerance is higher, but they are left without the FICC guaranty during the day. FICC's analysis has shown that increasing the real-time money tolerance to $2 per million would cause more than 1,000 additional trades to compare earlier in the day. FICC is thus proposing to amend the Schedule to provide for a $2 real-time tolerance per million for buy-sell transactions.

FICC believes the proposed rule change is consistent with the Act and the rules and regulations thereunder because it will permit valid trades to compare earlier in the day and thus will eliminate risk and will promote the prompt and accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

FICC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited nor received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because it

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Money tolerances are calculated based on the par amount of the securities. GSCC, FICC's predecessor, recently amended the real-time money tolerance applicable to the statement amount of repo transactions from $1 to $0.10. Securities Exchange act Release No. 46658 (October 11, 2002) 67 FR 64943 [SR–GSCC–2002–08]. In making that rule filing, GSCC inadvertently eliminated the text that was applicable to the real-time tolerance for the settlement money of buy-sell transactions, which is the subject of this present rule filing. This present rule filing therefore reinstates the necessary language to cover the real time tolerance applicable to buy-sell transactions and distinguishes it from the language applicable to repo transactions.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–(f)(4).

effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2002–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR–FICC–2002–13 and should be submitted by April 22, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7758 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47565; File No. SR–MSRB–2003–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of an Optional Procedure for Electronic Submission of Forms G–37/G–38 and G–37x Under Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G–38, on Consultants

March 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and rule 19b–4 thereunder,[1] notice is hereby given that on March 21, 2003, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change (File No. SR–MSRB–2003–01) (the ''proposed rule change'') described in items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change amending Rule G–37, on political contributions and prohibitions on municipal securities business, and Rule G–38, on consultants, to establish an optional procedure for electronic submission of Forms G–37/G–38 and G–37x. The proposed rule change will become effective on the later of June 30, 2003 or 30 days after Commission approval, and the MSRB expects that the new electronic submission system will become operational concurrently therewith. The text of the proposed rule change is set forth below. Additions are italicized; deletions are bracketed.

Rule G–37—Political Contributions and Prohibitions on Municipal Securities Business

(a)–(d) No change.

(e)(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board [by certified or registered mail, or some other equally prompt means that provides a record of sending, two copies of] Form G–37/G–38 setting forth, in the prescribed format, the following information:

(A)–(E) No change.

The Board shall make public a copy of each Form G–37/G–38 received from any broker, dealer or municipal securities dealer.

(ii)(A) No broker, dealer or municipal securities dealer shall be required to send Form G–37/G–38 to the Board for any calendar quarter in which either:

(1) No change.

(2) Subject to clause (B) of this paragraph (e)(ii), such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(a) No change.

(b) Has sent to the Board[, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of a] completed Form G–37x setting forth, in the prescribed format, (i) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (ii) certain acknowledgments as are set forth in said Form G–37x regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G–37/G–38 and G–37x under this paragraph (e)(ii) and rule G–8(a)(xvi), and (iii) such other identifying information required by Form G–37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G–37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G–37x to the Board in order to again qualify for an exemption under this subclause (A)(2). The Board shall make public a copy of each Form G–37x received from any broker, dealer or municipal securities dealer.

(B) No change.

(iii) No change.

(iv) A broker, dealer or municipal securities dealer that submits Form G–37/G–38 or Form G–37x to the Board shall either:

(A) Send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(B) submit an electronic version of such form to the Board in such format

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

and manner specified in the current Instructions for Form G–37/G–38 and Form G–37x.

(f)–(i) No change.

* * * * *

Rule G–38—Consultants

(a)–(d) No change.

(e) Disclosure to Board. Each broker, dealer and municipal securities dealer shall send to the Board, [by certified or registered mail, or some other equally prompt means that provides a record of sending,] and the Board shall make public, reports of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. *Such* [Two copies of the] reports must be sent to the Board on Form G–37/G–38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31) *in the manner provided under Rule G–37.* Such reports shall include, for each consultant, in the prescribed format, the consultant's name pursuant to the Consultant Agreement, business address, role (including the state or geographic area in which the consultant is working on behalf of the broker, dealer or municipal securities dealer), compensation arrangement, any municipal securities business obtained or retained by the consultant with each such business listed separately, and, if applicable, dollar amounts paid to the consultant connected with particular municipal securities business. Such reports shall indicate the total dollar amount of payments made to each consultant during the report period. In addition, such reports shall include the following information to the extent required to be obtained during such calendar quarter pursuant to paragraph (c)(i) of this rule:

(i)–(ii) No change.

(iii) if applicable, a statement that the consultant failed to provide any report of information to the *broker, dealer or municipal securities* dealer concerning reportable political contributions or reportable political party payments.

Once a contribution or payment has been disclosed on a report, the *broker, dealer or municipal securities* dealer should not continue to disclose that particular contribution or payment on subsequent reports.

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 MSRB 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 texts of these statements may be examined at the places specified in item IV below. The MSRB 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

Rules G–37 and G–38 require brokers, dealers and municipal securities dealers (''dealers'') to submit to the MSRB on Form G–37/G–38 certain information regarding political contributions to issuer officials, payments to state and local political parties, issuers with which the dealer has engaged in municipal securities business and consultants engaged by the dealer to obtain municipal securities business. In addition, certain dealers that wish to be exempted from the Form G–37/G–38 submission requirement must submit Form G–37x to the MSRB. The MSRB is implementing an optional system of electronic submission by dealers of Forms G–37/G–38 and G–37x to the MSRB. The MSRB also is amending rules G–37 and G–38 in order to effectuate this electronic system.[2]

Dealers will not be required to make submissions electronically and the MSRB will continue to accept submissions made on paper. Dealers that submit Forms G–37/G–38 and G–37x on paper will continue to be required to send two copies of each form to the MSRB by certified or registered mail, or some other equally prompt means that provides a record of sending.[3] Electronic submissions will be made as described below.[4]

Electronic submissions will be made by dealers through a secure, password-protected Internet website. A password will be assigned to a dealer prior to the first use by such dealer of the electronic system in a manner intended to assure authentication of submitters using the system. Each dealer will be required to submit an e-mail address for purposes of receiving electronic records of submissions as well as to provide for follow-up by MSRB staff should any submission prove to be incomplete or incorrect.

Forms G–37/G–38 and G–37x will be submitted electronically by completion of an on-line data entry form, by uploading of an electronic file of a completed form, or a combination of on-line data entry and uploading of files.[5] On-line forms will elicit the same information as paper Forms G–37/G–38 and G–37x and will be in substantially the same format. All uploaded files must be in Adobe Acrobat ® portable document format (''PDF''). The MSRB will continue to make all Forms G–37/G–38 and G–37x available to the public for viewing and printing through its website.

The new system will provide a dealer that makes an electronic submission with an electronic record confirming receipt of the submission and providing a control number assigned by the system. This electronic record, together with a PDF copy of the Form G–37/G–38 or G–37x submitted by the dealer made available by the system on-line, is intended to satisfy the requirement under Rule G–8(a)(xvi)(H) that dealers maintain copies of Forms G–37/G–38 and G–37x and records of sending such forms to the MSRB.[6]

The MSRB currently requires that any incomplete or incorrect submission be corrected by the submitter prior to the MSRB accepting the submission as in compliance with Rules G–37 and G–38. Thus, any submission through the electronic system will be subject to such automated and/or manual review as MSRB staff deems appropriate prior to final acceptance. The electronic record of submission sent by the system as described above should not be viewed as a record of acceptance by the MSRB.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which requires that the MSRB's rules:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[2] Technical amendments to the final sentence of Rule G–38(e) and to Rule G–38(e)(iii) are also made to conform language to usage throughout MSRB rules.

[3] Procedures for making submissions by paper are removed from Rules G–37(e)(i), G–37(e)(ii)(A)(2)(b) and G–38(e) and are consolidated in amended Rule G–37(e)(iv)(A).

[4] Amended Rule G–37(e)(iv)(B) provides that procedures for making submissions using the electronic system would be set forth in the MSRB's *Instructions for Form G–37/G–38 and Form G–37x* to be published upon implementation of the system. These instructions will replace the current *Instructions of Completing and Filing Form G–37/G–38.*

[5] For example, a dealer could provide information regarding political contributions through direct data entry into the on-line form and could upload an internally-generated electronic file listing all municipal securities business engaged in during the calendar quarter.

[6] Of course, this electronic record must be maintained in a manner that complies with section (e) of Rule G–9, on preservation of records.

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it allows for a more efficient process of submitting required information by dealers to the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commssion Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested that the proposed rule change become effective on the later of June 30, 2003 or 30 days after Commission approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0608. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2003–01 and should be submitted by April 22, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7731 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Alteration to an Existing System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of alteration to an existing Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) we are issuing public notice of our intent to alter an existing system of records, the *Claims Folders System, 60–0089*, by expanding the categories of records mentioned in the System. We discuss this proposed change in the **SUPPLEMENTARY INFORMATION** section below.

We invite public comments on these proposals.

DATES: We filed a report of the proposed alteration with the Chairwoman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 25, 2003. The proposed alteration will become effective on May 8, 2003, unless we receive comments on or before that date that would warrant our not implementing the proposed alteration.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Thibodeaux, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–9821, e-mail: *linda.thibodeaux@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alteration to Existing Privacy Act System of Records, the Claims Folders System, 60–0089

A. General Background

The Social Security Administration (SSA) plans to conduct several pilot projects designed to test and gather information on the use of photographic identification to address the issue of complicit impersonation in the disability and blindness claims process. The part of the disability and blindness determination process used by SSA to supplement existing medical evidence from treatment sources when there is not enough information to make a disability or blindness determination or decision is the consultative examination (CE). Complicit impersonation is accomplished when an individual posing as the intended claimant, and with the consent of the claimant, responds to a CE appointment in order to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees.

SSA is promulgating temporary regulations that will provide the authority for us to require individuals filing for title II or title XVI disability and blindness benefits in the pilot sites to have their photograph taken. Once these regulations are promulgated, failure to comply with the pilot requirements will result in denial of benefits.

The claimant identification pilot projects will be in effect for a six-month period of time that will begin 30 days after final rules providing regulatory authority for the pilots are published in the **Federal Register**. The pilot sites include all SSA field offices in the States of South Carolina and Kansas; the Augusta, Georgia SSA field office; and nine SSA field offices located in New York City: Uptown (Manhattan); East Bronx (Bronx); Parkway (Bronx); West Farms (Bronx); Bushwick (Brooklyn); East New York (Brooklyn); Avenue X (Brooklyn); Flatbush (Brooklyn) and Flushing (Queens).

B. Pilot Methodology

Individuals filing for title II and title XVI disability and blindness benefits at a Social Security office in the pilot sites will be required to participate in the claimant identification pilots. In addition, individuals filing via the Internet or by telephone and who are later required to undergo CEs will be included in the pilots. Each individual will be asked to provide some form of photographic identification. This identification will be photocopied and the copy will be made part of his/her SSA claims folder. If the individual does not have photographic identification available or does not wish to provide it, SSA personnel will not require it but will follow identification procedures already in place.

Next, as part of the claimant identification pilots, individuals will be required to have a photograph taken by SSA personnel, regardless of whether the individual provides photographic identification for photocopying. (An exception to the photograph requirement will be permitted when an individual has a sincere religious objection.) A copy will be made of the image and placed in the individual's SSA claims folder. Images also will be stored electronically and accessed by authorized SSA and Disability Determination Service (DDS) personnel. If DDS personnel request a CE for the individual, a hard copy image of the photograph will be made available to the person conducting the CE. This will help to determine whether the individual appearing for the CE is the same individual who presented himself or herself as the individual filing for disability benefits. When the CE physician has not been provided with a photograph or a copy of a photographic identification previously made by SSA personnel, *e.g.*, the claim was filed via the Internet or by telephone, the CE physician will copy the individual's photographic identification and place it in the claims folder.

Additionally, this same requirement will be used to verify the identity of pilot participants during the duration of the pilots if they are required to appear for subsequent interviews including Continuing Disability Reviews, SSI Redeterminations, and appeals associated with a denial of a claim including any CEs associated with those appeals.

II. Impact of the Collection, Maintenance and Use of Pilot Data on SSA Privacy Act System of Records: The Claims Folders System

The *Claims Folders System* contains information that constitutes the basic record for payments and determinations made for program benefits under the Social Security Act. Included in claim folder records is identifying information about claimants for Social Security benefits.

We are proposing to revise the description of the categories of records maintained in the *Claims Folders System*. In connection with the claimant identification pilot projects SSA is conducting, records specifically collected for the pilot projects will be maintained in the claims folders of those individuals who file for title II or title XVI disability and blindness benefits for the duration of the pilot. The records include: photocopies of identification documents, photographs taken by field office personnel or a report of contact or other documentation explaining why an individual refused to allow SSA to take their photograph, flag on the folder indicating the case is part of the pilot, and the evaluation forms developed for the pilot.

III. Effect of the Proposed Alteration on the Rights of Individuals

SSA's implementation of the claimant identification pilots will result in the collection and maintenance of information to test the use of photograph identification to address the issue of complicit impersonation in the disability and blindness claims process. SSA will maintain photocopies of identification documents and photographs. We will afford individuals suspected of fraudulent activities all due process and other rights to which they are entitled. There is potential for an adverse effect on those individuals who refuse to be photographed for reasons other than a sincere religious objection. Failure to comply with the mandatory requirements of the pilot will result in denial of benefits.

Dated: March 25, 2003.

Jo Anne B. Barnhart,

Commissioner.

60–0089

SYSTEM NAME:

Claims Folders System, Social Security Administration, Office of the General Counsel, Office of Public Disclosure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under Social Security Administration (SSA). This information can also be found on the Agency's Web site, Social Security Online. The claims folders are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below. In addition, the information provided by Social Security claimants on the application for benefits is maintained as a computerized record. The computerized records are maintained at the following address: Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre, Pennsylvania. The address is:

Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, PO Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the SSA's PSCs (contact the system manager at the address below for PSC address information). If the individual to whom the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Central Operations (OCO) Rolling Heights Building (Megasite). The address for the Megasite is: 2255 Rolling Road, Baltimore, MD 21244.

Disability Insurance (DI) claims folders for individuals under age 55 are maintained primarily in the OCO Megasite (*see* the address above).

DI claims folders for disabled individuals age 55 and over are maintained in SSA's National Records Center (NRC). The address for the NRC is: 601 S. 291 Hwy., 6000 E. Geospace Dr., Independence, MO 64056.

If the individual to whom the claim pertains resides outside the United States or any of its possessions, DI claims folders for individuals are maintained in the OCO Megasite (*see* the address above).

Special Veterans Benefits (SVB) claims folders are held in Social

Security field offices and the Veterans Affairs Regional Office (VARO), Philippines pending establishment of a payment record or until the appeal period in a denied claim situation has expired. Contact the system manager for address information for SVB claims folders maintained in the VARO, Philippines. The VA data file associated with SVB claims is located in SSA's San Francisco Regional Office. The address is: Center for Infrastructure, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Avenue, Richmond, California 94801.

In addition, claims folders are transferred to the General Services Administration and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations. Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants for benefits and payments administered by the Social Security Administration (*e.g.*, title II RSI and DI benefits; and title VIII SVB and title XVI SSI payments). Folders also are maintained on claims that have been denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The claims folder contains the name and Social Security number of the claimant or potential claimant; the application for benefits; earnings record information established and maintained by SSA; documents supporting findings of fact regarding factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, IRS, VA and mental institutions. There is also a VA data file associated with SVB claims. This data includes potential beneficiaries for title VIII SVB and will be used to help determine individuals' eligibility.

The claims folder also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of claims policies. Separate files may be maintained of certain actions, which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases. Separate abstracts also are maintained for statistical purposes (*i.e.*, disallowances, technical denials, and demographic and statistical information relating to disability decisions).

In addition, the claims folder may contain information collected in connection with SSA's Claimant Identification Pilot Projects. This information includes: photocopies of identification documents, photographs taken by field office personnel or a report of contact or other documentation explaining why an individual refused to allow SSA to take their photograph, flag on the folder indicating the case is part of the pilot, and the evaluation forms developed for the pilot.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 (42 U.S.C. Sections 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o and 1395s and title VIII of the Social Security Act.

PURPOSE(S):

Each claim constitutes a basic record for payments and determinations under the Social Security Act. The information in the claims folder is used to produce and maintain the Master Beneficiary Record (60–0090), which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (60–0103), which is the automated payment system for SSI payments for the aged, blind, disabled and SVB payments under title VIII of the Act; the Black Lung Payment System (60–0045), which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

Claims folders information is used throughout SSA for purposes of pursuing claims; determining, organizing and maintaining documents for making determinations of eligibility for benefits, the amount of benefits, the appropriate payee for benefits; reviewing continuing eligibility; holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Claims folders may be referred to State disability determination services agencies or vocational rehabilitation agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls, *i.e.*,

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the

rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

10. To the Department of Veterans Affairs, Philippines Regional Office and its agents for administering the Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

12. To RRB for administering provisions of the Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments for administering sections 205(c)(B)(i)(II) and 402(a)(25) of the Act requiring information about assigned SSNs for AFDC program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22.To State welfare departments:

(a) Pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Act.

24. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA)

and the National Archive and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

31. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

32. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

33. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

34. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (*e.g.*, on disk and microcomputer).

RETRIEVABILITY:

Claims folders are retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

Paper claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. All magnetic tapes and disks are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges, which are issued only to authorized personnel. All microfilm and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

The retention periods for claims folders are as follows:

A. RSI CLAIMS FOLDERS

Folders for disallowed life and death claims, withdrawals, and lump-sum claims in which potential entitlements exist are transferred to the FRC after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

B. DI CLAIMS FOLDERS

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

C. SSI CLAIMS FOLDERS AND SVB FOLDERS

Folders for SSI and SVB death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI and SVB terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN the claim folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in a Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1 to 6 months. Claims leads that do not result in a filing of an application are destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

When requesting notification, the individual should provide the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, SSI or SVB). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will

identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

An individual who requests access to his or her medical records shall be given direct access to those records unless SSA determines that it is likely that direct access would adversely affect the individual. If SSA determines that direct access to the medical record(s) would likely adversely affect the individual, he or she must designate a responsible representative who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 03–7755 Filed 3–31–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4269]

Notice of Meeting of the United States International Telecommunication Advisory Committee To Prepare for ITU Council Meeting April 17, 2003

The Department of State announces a meeting of the U.S. InternationalTelecommunication Advisory Committee (ITAC) on April 17 to discuss the International Telecommunication Union (ITU) Council meeting to be held in Geneva from May 5 to May 16. The purpose of the ITAC meeting is to advise the Department on policy, technical and operational issues that will be considered by the Council. The time and location of the ITAC meeting will be announced via email. People may join the e-mail broadcast list by sending a request to *worsleydm@state.gov* or calling (202) 647–2592.

Dated: March 24, 2003.

Marian Gordon,

Director, Telecommunication & Information Standardization,Department of State.

[FR Doc. 03–7780 Filed 3–31–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4301]

Notice of Meetings: United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on April 17, 2002, from 10:30 am to 12 pm at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC. Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202)–647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202–647–2592 or e-mail to *worsleydm@state.gov.*

Dated: March 25, 2003.

Sally Shipman,

Telecommunication Policy Advisor, Department of State.

[FR Doc. 03–7781 Filed 3–31–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Supplemental Environmental Impact Statement (SEIS), Salt Lake and Davis Counties, UT

AGENCIES: Federal Highway Administration (FHWA), DOT. Army Corps of engineers (USACE), DoD.

ACTION: Notice of intent.

SUMMARY: FHWA and USACE, as Federal joint lead agencies, are issuing this notice to inform the public and affected public agencies that an SEIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) for Utah Department of Transportation's proposed construction of the Legacy Parkway project in Salt Lake and Davis Counties, Utah.

FHWA is a lead agency because it must approve the connection of the proposed project to Interstate 215 (I–215) and Interstate 15 (I–15); the USACE is a lead agency because it must issue a 404 permit pursuant to the Clean Water Act. The U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS) and Federal Transit Administration (FTA) have agreed to serve as ''cooperating agencies'' in the preparation and review of the SEIS.

FOR FURTHER INFORMATION CONTACT: Greg Punske, Environmental Program Manager, FHWA, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118 or Nancy Kang, Chief, Utah Office, USACE, 533 West 2600 South, Suite 150, Bountiful, Utah 84010. Written comments on the scope and content of the SEIS should be submitted to the above contacts by June 1, 2003.

SUPPLEMENTARY INFORMATION: The proposed action is the construction of the Legacy Parkway in the corridor from I–215 at 2100 North in Salt Lake City northward to I–15 and U.S. 89 near Farmington (approximately 14 miles). A multiple-use trail for pedestrians, bicyclists, and equestrians would parallel the highway. The proposed action is related to the three-part ''Shared Solution'' to 2020 transportation problems, which includes: (1) Constructing the Legacy Parkway; (2) improving and expanding I–15; and (3) expanding the public transit system, including transit, intelligent transportation systems (ITS), travel demand management (TDM) and transportation systems management (TSM). Separate environmental studies pursuant to NEPA are being prepared for improving and expanding I–15 and expansion of the public transit system.

The SEIS will supplement the June 2000 Legacy Parkway Final EIS (FEIS) (FHWA–UT–EIS–98–02–F), which was the subject of litigation and a court decision in *Utahns for Better Transportation et al.* v. *U.S. Department of Transportation et al.* (305 F.3d 1152 (10th Cir. 2002)). In accordance with that decision, several specific aspects of the FEIS require further study. Additionally, the FEIS will be re-evaluated to determine if any other information should be updated and revised as part of the SEIS process in accordance with FHWA NEPA regulations 23 CFR 771.129.

FHWA and USACE have made a preliminary determination to consider the following alternatives in the SEIS based on the court ruling: (1) The Denver and Rio Grande railroad (D&RG) alignment, which involves locating a portion of the Legacy Parkway within the railroad regional alignment corridor defined in the FEIS; (2) a narrower right-of-way for the proposed alignment; (3) alternative sequencing of the Shared Solution; (4) concurrent integration of the construction of the Legacy Parkway with expansion of public transit and (5) the No Build alternative. The SEIS will also consider impacts to wildlife, as required by the court.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the SEIS should be directed to the FHWA and USACE at the addresses given above. Scoping will be accomplished through public and interagency scoping meetings, as well as correspondence and meetings with interested persons, organizations, and Federal, State, and local agencies. Informational displays and written material will also be available throughout the time periods given.

An initial scoping meeting will be held on April 17, 2003, at the Woods Cross High School, 600 West 2200 South in Woods Cross from 4 p.m. to 8 p.m. Public notice will be given of the time and place of additional meetings. (Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 26, 2003.

Gregory S. Punske,

Environmental Program Manager, FHWA, Salt Lake City, Utah.

Nancy Kang,

Chief, Utah Office, USACE, Salt Lake City, Utah.

[FR Doc. 03–7751 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 2, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ____. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence

submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words ''Dedicated Service'' must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5 (c)(2), 215.5 (d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 6.

Estimated Annual Burden: 6 hours.

Status: Regular Review.

Title: Remotely Controlled Railroad Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for fifteen days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours (hours)	Total annual burden cost
Blue Signal Protection	70	8,942,500 records	2	298,083	$9,240,573
Camp Cars	7	4,000 notifications	4	267	8,277

Total Estimated Annual Burden: 298,350 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a ''bad order'' tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged ''bad order'' so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the ''bad order'' tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 165,000 tags/notifications/records.

Average Time Per Response: 4.636 minutes.

Estimated Total Annual Burden: 12,750 hours.

Status: Regular Review.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Abstract: Title 49, section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 20,000 cars stencilled.

Average Time Per Response: 45 minutes.

Estimated Total Annual Burden: 15,000 hours.

Status: Regular Review.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion/recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Respondent reply to disqualification order.	40,000 locomotive engineers.	1 doc. reply	3 hours	3 hours	$135
Informal reply to proposed disqualification order.	40,000 locomotive engineers.	1 informal response.	1 hour	1 hour	45
Provide copy of disqualification order to prospective employer.	685 railroads	1 notification	30 minutes	.5 hour	23
Request copy of disqualification order from previous employer.	685 railroads	Usual and customary procedure.	N/A	N/A	N/A

Total Estimated Burden: 5 hours.

Status: Regular Review.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Form Number(s): FRA F 6180.83.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours (hours)	Total annual burden cost
234.7—Telephone Notification	685	4 phone calls	15	1	$34
234.9—Grade crossing signal system failure rpts.	685	600 reports	15	150	5,100
234.9—Notification to train crew and highway traffic control authority.	685	24,000 notifications	5	2,000	68,000
234.9—Recordkeeping	685	12,000 records	10	2,000	68,000

Total Estimated Burden: 4,151.

Status: Regular Review.

Title: New Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Abstract: Part 210 of Title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 2 Locomotive Manufacturers.

Total Responses: 2,040 requests/badges/measurements.

Average Time Per Response: 1.725 hours.

Estimated Total Annual Burden: 3,520 hours.

Status: Regular Review.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications For Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by part 236 of this title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the ''Signal System Five Year Report.'' It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, Part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines material modifications' and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377 to 236.387; sections 236.576, 236.577; and section 236.586–236.589. Section 236.110 further provides that the test results must be recorded on preprinted or computerized forms provided by the carrier and that the forms show the name of the railroad; place and date of the test conducted; equipment tested; tests results; repairs; and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in compliance with section 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Form Number(s): FRA F 6180.14; FRA F 6180.47.

Affected Public: Businesses.

Frequency of Submission: On occasion;

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
233.5—Reporting of accidents	685	10 phone calls	30 minutes	5	$170
233.7—False proceed signal failures report	685	100 reports	15 minutes	25	850
233.9—5 Year signal system report	N/A	Outside scope of PRA.	Outside scope of PRA.	(1)	(1)
235.5—Block signal applications	80	111 applications	10 hours	1,110	37,740
235.8—Applicatioins for relief	80	24 relief requests	2.5 hours	60	2,040
235.20—Protest letters	80	84 protest letters	30 minutes	42	1,428
236.110—Record keeping	80	936,660 forms	27 minutes	427,881	14,547,954

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
236.587—Departure tests	18	730,000 tests	4 minutes	48,667	1,654,678
236.590—Pneumatic valves	18	6,697 stencilings	22.5 minutes	2,511	85,374

[1]Outside scope of PRA.

Total Estimated Burden: 480.301 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 26, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–7807 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on October 30, 2002 [67 FR 66193].

DATES: Comments must be received on or before May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor at the National Highway Traffic Safety Administration, (NVS–131), 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her facsimile number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 575; Consumer Information Regulations (Sections 103 and 105).

OMB Control Number: 2127–0049.

Type of Request: Extension of a currently approved information collection.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation part 575.103 Truck-camper loading and part 575.105 Utility Vehicles. Part 575.103 requires that manufacturers of light trucks that are capable of accommodating slide-in campers provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Part 575.105 requires manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Estimated Total Annual Burden: 300 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: March 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–7808 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14628]

Extension of Comment Period on Whether Nonconforming 1996 and 1997 Lamborghini Diablo Passenger Cars Are Eligible for Importation

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

ACTION: Extension of comment period.

SUMMARY: On March 12, 2003, NHTSA published notice (at 68 FR 11898) that it had received a petition to decide that nonconforming 1996 and 1997 Lamborghini Diablo passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is April 11, 2003.

This is to notify the public that NHTSA is extending the comment period until May 30, 2003. This extension is based on a request from Automobili Lamborghini S.p.A. (''Lamborghini''). In requesting the extension, Lamborghini noted that its available resources for responding to the petition are ''seriously constrained.'' In particular, Lamborghini stated that it has only two employees who would be able to conduct the necessary research to prepare the response and those employees will be on travel in the United States for three to four weeks beginning March 18, 2003 to prepare the company's emission certification on a vehicle to be introduced in the 2004 model year.

DATES: Comments on the import eligibility petition must be submitted on or before May 30, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 9 am to 5 pm). Anyone is able to search the electronic form of all

comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 27, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–7809 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 16, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 21, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
4884–M		Matheson Tri-Gas, Inc., East Rutherford, NJ. (*See* Footnote 1.)	4884
10704–M		Terumo Cardiovascular Systems, Tustin, CA. (*See* Footnote 2.)	10704
12068–M	RSPA–98–3850	Sea Launch Company, L.L.C., Long Beach, CA. (*See* Footnote 3.).	12068
12112–M	RSPA–98–4322	Kidde Aerospace, Wilson, NC. (*See* Footnote 4.)	12112
13048–M	RSPA–02–12808	U.S. Department of Energy, Richland, WA. (*See* Footnote 5.)	13048
13170–M		Premier Industries, Fridley, MN. (*See* Footnote 6.)	13170

(1) To modify the exemption to authorize alternative packaging under certain segregation scenarios when transported by private carrier.
(2) To modify the exemption to authorize the transportation of an additional Division 2.2 material in DOT Specification 2Q containers.
(3) To modify the exemption to authorize the transportation of an additional Class 3 material contained as part of the launch vehicle with and without payload.
(4) To modify the exemption to authorize the use of a non-DOT specification steel cylinder used as a component in aircraft of foreign manufacture for the transportation of division 2.2 materials.
(5) To modify the exemption to authorize an alternative disposal site for the one-time, one-way transportation of a Division 4.3 material in a non-DOT specification containment system for disposal.
(6) To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in a non-DOT specification pressure vessel assembly.

[FR Doc. 03–7709 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of

Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 1, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*See* Docket Number) are available for inspection at the new Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on March 24, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
33208–N	.....	Provensis Limited of South Harefield Middlesex, UK.	49 CFR 171.11(d)(14), 171.11(d)(7), 171.12(b)(17), 173.306(a)(3)(v), part 174, part 177.	To authorize the transportation in commerce of aerosol containers that have not been subjected to the hot water bath test for use in transporting non-flammable compressed gas. (Modes 1, 2, 3, 4.)
13209–N	.....	Corning, Inc., Corning, NY.	49 CFR 173.21(e), 173.25(a)(1), 180.205(g).	To authorize the transportation in commerce of sodium borophydridge, Division 4.3 with various aqueous solutions in specially designed packaging. (Modes 1, 4.)
13211–N	.....	Avecia Inc., Wilmington, DE.	49 CFR 172.101, SP N8.	To authorize the transportation in commerce of a non-bulk UN standard alternative packaging for use in transporting nitroglycerin solution in alcohol. (Modes 1, 3, 5.)
13212–N	.....	Southern California Edison, San Clemente, CA.	49 CFR 173.427, 173.465(c), 173.465(d).	To authorize the transportation in commerce of three large reactor coolant pumps containing Class 7 radioactive materials and surface contaminated objects. (Mode 1.)
13213–N	.....	Washington State Ferries, Seattle, WA.	49 CFR 172.101(10a)	To authorize the transportation in commerce of limited quantities of Class 3, Class 9 and Division 2.1 hazardous materials being stowed on and below deck on passenger ferry vessels transporting motor vehicles, such as recreational vehicles, with attached cylinders of liquefied petroleum gas. (Mode 5.)

[FR Doc. 03–7710 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alterations to two Department of the Treasury, Financial Management Service (FMS), Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Department of the Treasury, Financial Management Service (FMS), gives notice of proposed alterations to two of its existing systems of records, as follows: ''Payment Issue Records for Regular Recurring Benefit Payments—Treasury/FMS .002'' and ''Payment Records for Other Than Regular Recurring Benefit Payments .016.'' The systems of records were last published in the **Federal Register** in their entirety on August 22, 2001, beginning in 66 FR 44204. An alteration to the systems was published in the **Federal Register** on February 26, 2003, in 68 FR 8964.

DATES: Comments must be received no later than May 1, 2003. The proposed systems of records will be effective May 12, 2003 unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to Federal Finance, Financial Management Service, 401 14th Street, SW., Room 426B, Washington, DC 20227, or by electronic mail to *michael.dressler@fms.treas.gov.* Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael Dressler, Financial Management Service, Federal Finance, (202) 874–7082.

SUPPLEMENTARY INFORMATION: The Financial Management Service (FMS) is the money manager for the Federal Government. As such, FMS disburses over 900 million payments totaling more than $1.64 trillion in social security and veterans' benefits, income tax refunds, and other federal payments. In the operation of its payment programs, FMS maintains records on individuals who receive payments from the Federal Government. Records on individuals who receive Federal payments are maintained in FMS's ''Payment Issue Records for Regular Recurring Benefit Payments-Treasury/FMS .002,'' and ''Payment Records for Other Than Regular Recurring Benefit Payments-Treasury/FMS .016.''

As part of its continuing efforts to efficiently operate and manage its payment disbursement processes, FMS sometimes retains the services of its fiscal agents (the Federal Reserve Banks (FRBs)), financial agents (financial institutions), and/or contractors of FMS or FMS's fiscal or financial agents. For example, FMS may ask the FRB and/or a contractor to assist FMS in surveying payment recipients to ascertain public attitudes about direct deposit and other alternatives to check payments. Such

services assist FMS in determining the most efficient and effective way to deliver Government payments to the public. Disclosures of information maintained in FMS's systems of records, specifically, a payee's name and address, may be required in order for the FRB or a contractor to perform the services for which it has been retained. If disclosure to a financial agent or contractor is necessary, the financial agent or contractor to which disclosure is made will be subject to the same limitations applicable to FMS officers and employees under the Privacy Act. This means that the financial agent or contractor is required to safeguard Privacy Act information to prevent unauthorized use or disclosure of any Privacy Act records. In addition, the FRB and regulated financial institutions impose their own strict limitations concerning the protection of non-public personal information.

FMS is altering the referenced systems of records to allow disclosure of information from such systems to its fiscal or financial agents, their employees, agents or contractors, or to a private contractor as necessary to efficiently operate and manage its payment disbursement processes.

For the reasons set forth above, FMS proposes to alter its systems of records as follows:

Treasury/FMS .002

SYSTEM NAME:

Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

DESCRIPTION OF CHANGE:

The period ''.'' at the end of routine use (14) is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act.''

* * * * *

Treasury/FMS .016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

DESCRIPTION OF CHANGE:

The period ''.'' at the end of routine use (14) is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act.''

* * * * *

Dated: March 25, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–7767 Filed 3–31–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (VA Home Loan Guaranty Program Evaluation)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, 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 new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to evaluate home loan guaranty and specially adapted housing grant programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Christopher LaLonde, Office of Assistant Secretary for Planning and Analysis (008B), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or *mailto:christopher.lalonde@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW (VA Home Loan Guaranty Program Evaluation)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Christopher LaLonde at (202) 273–2122 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA'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: VA Home Loan Guaranty Program Evaluation.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The purpose of these surveys is to provide information for an evaluation that assesses the effectiveness and efficiency of VA Home Loan Guaranty Program for assisting eligible veterans and active duty military personnel to purchase, construct, repair, or improve a dwelling that they will own and occupy as their home; and to assess the adequacy, efficiency, and effectiveness of the Specially Adapted Housing Grant Program. These surveys will assist VA with the improvement of program operations and development of policy

positions to support the needs and requirements of the veteran population.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 1,140 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,281.

Dated: March 20, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7698 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

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 an applicant's entitlement to counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

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. 2900–0265'' 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 (Pub. L. 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 Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–8832 is used by Vocational Rehabilitation and Counseling to quickly assess an applicant's probable entitlement to counseling. A veteran or dependent may use this form to apply for counseling services.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 20, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7699 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

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 May 1, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0353.''

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. 2900–0353'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certification of Lessons Completed, (Chapters 30, 32, and 35, Title 38, U.S.C.; Chapter 1606, Title 10, U.S.C., and section 903, Pub. L. 96–343), VA Forms 22–6553b and 22–6553b–1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 22–6553b and 22–6553b–1 are used to determine the number of lessons completed by a student and serviced by the correspondence school, and if necessary to determine the date of completion or termination of correspondence training. VA pays education benefits based on the information furnished on the form. Benefits are not payable when training is interrupted, discontinued or completed. Without this information, VA would be unable to determine the proper payment or the student's training status.

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 December 3, 2002, at pages 72029–72030.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 1,782 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 3,564.

Number of Responses Annually: 10,692.

Dated: March 13, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7700 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

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 May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0321.''

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. 2900–0321'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–22 is completed by VA beneficiaries to appoint a representative from a recognized veterans service organization to represent them in the prosecution of their VA claims. The information is used to determine who has access to the beneficiary's claim file and the right to receive copies of correspondence from VA to the beneficiary. Title 38, U.S.C. 5902(b)(2), provides that VA may recognize representatives of service organizations to assist beneficiaries in the prosecution of VA claims, but that no individual shall be recognized unless such individual has filed a power of attorney, executed in a manner prescribed by VA.

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 January 30, 2003, at page 4815.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 325,000.

Dated: March 20, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7701 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

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 whether or not proprietary schools receiving Federal financial assistance from VA and the Department of Education are in compliance with equal opportunity laws.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

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. 2900–0180'' 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 (Pub. L. 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: Compliance Report of Proprietary Institutions, VA Form 20–4274.

OMB Control Number: 2900–0180.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 20–4274 is used to determine whether or not proprietary educational institutions receiving Federal financial assistance are in compliance with applicable civil rights statute and regulations. The collected information is used to identify areas that

may indicate, statistically, disparate treatment of minority group members.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 124 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: March 13, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7714 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 62

Tuesday, April 1, 2003

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

Correction

In proposed rule document 03–872 beginning on page 2930 in the issue of Wednesday, January 22, 2003, make the following corrections:

1. On page 2932, in the first column, in the first full paragraph, in the third line from the bottom, ''an'' should read, ''and''.

PART 1—[CORRECTED]

2. On page 2933, in the third column, under amendatory instruction 2., the first paragraph is corrected to read as follows:

''1. Paragraph (b)(0) is amended by adding entries for 1.704–1(b)(2)(iv)(*d*)(*4*), 1.704–1(b)(2)(iv)(*h*)(*1*), 1704–1(b)(2)(iv)(*h*)(*2*), 1.704–1(b)(2)(iv)(*s*), 1.704–1(b)(4)(ix), and 1.704–1(b)(4)(x).''

§ 1.704–1 [Corrected]

3. On page 2934, in the first column, in § 1.704–1 (d)(4), in the second line from the bottom, add the following sentence after the word ''conversion.'':

''With respect to convertible debt, the fair market value of the property contributed on the exercise of the option includes the adjusted basis and the accrued but unpaid qualified stated interest on the debt immediately before the conversion.''

4. On the same page, in the second column, in the same section, in paragraph (2), in the second line, ''value'' should read, ''value of''.

5. On the same page, in the same column, in the same section, in the same paragraph, in the eighth line, ''(b)(2)(iv(*f*)'' should read, ''(b)(2)(iv)(*f*)''.

6. On page 2935, in the first column, in the same section, in paragraph (s)(4), in the fifth line, ''(s)(3)'' should read, ''(*s*)(*3*)''.

7. On page 2936, in the same section, in the last table, in the fifth column, the column heading. ''1704(c) book'' should read, ''704(c) book''.

8. On page 2937, in the same section, in the first table, in the fifth column, the column heading. ''1704(c) book'' should read, ''704(c) book''.

§ 1.761–3 [Corrected]

9. On page 2941, in the first column, in § 1.761–3 (d), in paragraph (ii), in the second line, ''Example 3'' should read, ''*Example 3*''.

[FR Doc. C3–872 Filed 3–31–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 1, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves; Final and Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF20

Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) hereby changes the classification of the gray wolf (*Canis lupus*) under the Endangered Species Act of 1973, as amended (Act). We establish three distinct population segments (DPS) for the gray wolf in the conterminous United States. Gray wolves in the Western DPS and the Eastern DPS are reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Gray wolves in the Southwestern DPS retain their previous endangered or experimental population status. All three existing gray wolf experimental population designations are retained and are not affected by this rule. Gray wolves are removed from the protections of the Act in all or parts of 16 southern and eastern States where the species historically did not occur. We establish a new special regulation under section 4(d) of the Act for the threatened Western DPS to increase our ability to respond to wolf-human conflicts outside the two experimental population areas in the Western DPS. A second section 4(d) special regulation applies provisions similar to those previously in effect in Minnesota to most of the Eastern DPS. We find that these special rules are necessary and advisable to provide for the conservation of the Western DPS and the Eastern DPS. The classification, under the Act, of captive gray wolves is determined by the location from which they, or their ancestors, were removed from the wild. This final rule does not affect the protection currently afforded by the Act to the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: This rule becomes effective April 1, 2003. The explanation of the need for an immediate effective date is found in the **SUPPLEMENTARY INFORMATION** section under the heading *Need for Immediate Implementation.*

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at our Midwest Regional Office: U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Call 612–713–5350 to make arrangements. The comments and materials we received during the comment period are also available for public inspection, by appointment, during normal business hours at this and other Regional Offices and several of our Ecological Services field offices. Use the contact information in the next paragraph to obtain the addresses of those locations.

FOR FURTHER INFORMATION: Direct all questions or requests for additional information to the Service using the Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, the general gray wolf electronic mail address—*GRAYWOLFMAIL@FWS.GOV,* or write to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Additional information is also available on our World Wide Web site at *http://midwest.fws.gov/wolf.* Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

This rule begins with discussions on the biology, ecology, taxonomy, and the historical range of the gray wolf. We then describe previous Federal listing actions taken for the gray wolf. Next we provide information concerning specific issues related to this rulemaking, including our Vertebrate Population Policy, experimental population designations, and wolf-dog hybrids. We conclude this introductory section with a discussion on the recovery of the gray wolf.

We next provide a summary of the many and diverse comments and recommendations on the proposal. All substantive issues that were raised during that comment period are described, and we present our response to each of those issues.

A detailed discussion is then presented for the five listing factors as required by the Act. We analyze these factors for the reclassification of certain populations in response to the current status of the species, which encompasses present and future threats and conservation efforts. We designate three distinct population segments (DPSs), and we also discuss how this listing affects wolves in captivity and their role in wolf recovery.

We next describe the differences between our July 13, 2000, proposal (65 FR 43450) and this final rule. In our proposal, we identified a variety of alternative actions that we considered but did not propose, and we explained the reasons for selecting the proposed action. We also requested comments on those alternatives. Those alternatives will not be discussed in this rule except in the cases where they were adopted or partially adopted in our final decision, or were otherwise addressed in substantive comments that we received.

Separate sections explain the two special regulations that are being adopted and how these special regulations are consistent with the conservation of the gray wolf within their respective DPSs. We also explain the conservation measures that are being provided to the species by this rule. The text of the regulatory changes for the gray wolf is found at the end of this document.

A. Biology and Ecology of Gray Wolves

Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg)(40 to 175 pounds (lb)) depending upon sex and subspecies (Mech 1974). The average weight of male wolves in Wisconsin is 35 kg (77 lb) and ranges from 26 to 46 kg (57 to 102 lb), while females average 28 kg (62 lb) and range from 21 to 34 kg (46 to 75 lb) (Wisconsin Department of Natural Resources (WI DNR) 1999a). In the northern U.S. Rocky Mountains, adult male gray wolves average just over 45 kg (100 lb), while the females weigh slightly less. Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black. Wolves may appear similar to coyotes (*Canis latrans*) and some domestic dog breeds (such as the German shepherd or Siberian husky) (*C. familiaris*). However, wolves' longer legs, larger feet, wider head and snout, and straight tail distinguish them from both coyotes and dogs.

Wolves primarily are predators of medium and large mammals. Wild prey species in North America include white-tailed deer (*Odocoileus virginianus*) and mule deer (*O. hemionus*), moose (*Alces alces*), elk (*Cervus canadensis*), woodland caribou (*Rangifer caribou*) and barren ground caribou (*R. arcticus*), bison (*Bison bison*), muskox (*Ovibos moschatus*), bighorn sheep (*Ovis canadensis*) and Dall sheep (*O. dalli*), mountain goat (*Oreamnos americanus*),

beaver (*Castor canadensis*), and snowshoe hare (*Lepus americanus*), with small mammals, birds, and large invertebrates sometimes being taken (Mech 1974, Stebler 1944, WI DNR 1999a). In the Midwest, during the last 22 years, wolves have also killed domestic animals including horses (*Equus caballus*), cattle (*Bos taurus*), sheep (*Ovis aries*), goats (*Capra hircus*), llamas (*Lama glama*), pigs (*Sus scrofa*), geese (*Anser sp.*), ducks (*Anas sp.*), turkeys (*Meleagris gallopavo*), chickens (*Gallus sp.*), pheasants (*Phasianus colchicus*), dogs, and cats (*Felis catus*) (Paul 2001, Wydeven *et al.* 2001a). Since 1987, wolves in the northern Rocky Mountains of Montana, Idaho, and Wyoming have also killed domestic animals, including llamas, horses, cattle, sheep, and dogs (Service *et al.* 2002).

Wolves are social animals, normally living in packs of 2 to 12 wolves. However, 2 packs within Yellowstone National Park (NP) had 22 and 27 members in 2000, and Yellowstone's Druid Peak pack increased to 37 members in 2001 (Service *et al.* 2001, 2002). Packs are primarily family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf. Packs typically occupy, and defend from other packs and individual wolves, a territory of 50 to 550 square kilometers (sq km) (20 to 214 square miles (sq mi)). However, in the northern U.S. Rocky Mountains territories tend to be larger, usually from 520 to 1,040 sq km (200 to 400 sq mi), and in Wood Buffalo National Park in Canada, territories of up to 2,700 sq km (1,042 sq mi) have been recorded (Carbyn *in litt.* 2000). Normally, only the top-ranking (''alpha'') male and female in each pack breed and produce pups. Litters are born from early April into May; they can range from 1 to 11 pups, but generally include 4 to 6 pups (Michigan Department of Natural Resources (MI DNR) 1997; Service 1992a; Service *et al.* 2001). Normally a pack has a single litter annually, but producing 2 or 3 litters in one year has been documented in Yellowstone NP (Service *et al.* 2002). Yearling wolves frequently disperse from their natal packs, although some remain with their natal pack. Dispersers may become nomadic and cover large areas as lone animals, or they may locate suitable unoccupied habitat and a member of the opposite sex and begin their own territorial pack. Dispersal movements on the order of 800 km (500 mi) have been documented (Fritts 1983; James Hammill, Michigan DNR, *in litt.* 2001).

The gray wolf historically occurred across most of North America, Europe, and Asia. In North America, gray wolves formerly occurred from the northern reaches of Alaska, Canada, and Greenland to the central mountains and the high interior plateau of southern Mexico. The only areas of the conterminous United States that apparently lacked gray wolf populations since the last glacial events are parts of California and portions of the eastern and southeastern United States (an area occupied by the red wolf). In addition, wolves were generally absent from the extremely arid deserts and the mountaintops of the western United States (Young and Goldman 1944, Hall 1981, Mech 1974, Nowak 2000). (Refer to the *Taxonomy of Gray Wolves in the Eastern United States* section below for additional discussion.)

European settlers in North America and their cultures often had superstitions and fears of wolves. Their attitudes, coupled with perceived and real conflicts between wolves and human activities along the frontier, led to widespread persecution of wolves. Poisons, trapping, and shooting-spurred by Federal, State, and local government bounties-resulted in extirpation of this once widespread species from more than 95 percent of its range in the 48 conterminous States. At the time of the passage of the Act, likely only several hundred wolves occurred in northeastern Minnesota and on Isle Royale, Michigan, and possibly a few scattered wolves in the Upper Peninsula of Michigan, Montana, and the American Southwest.

Researchers have learned a great deal about gray wolf biology, especially regarding the species' adaptability and its use of nonwilderness habitats. Public appreciation of the role of predators in our ecosystems has increased, and we believe that the recovery of the species is widely supported. Most importantly, within the last decade the prospects for gray wolf recovery in several areas of their former historical United States range have greatly increased. In the western Great Lakes area, wolves have dramatically increased their numbers and occupied range. Gray wolf reintroduction programs in the northern U.S. Rocky Mountains have shown great success. Additionally, the reintroduction and recovery program of the Mexican wolf in the American Southwest, although in its initial stages, is beginning to show similar progress after only a few years.

The gray wolf (*Canis lupus*) is one of two North American wolf species currently protected by the Act. The other is the red wolf (*C. rufus*), a separate species that is listed as endangered throughout its range in the southeastern United States and extending west into central Texas. The red wolf is the subject of a separate recovery program. This final rule does not affect the current listing status or protection of the red wolf.

B. Taxonomy of Gray Wolves in the Eastern United States

Both the 1978 and 1992 versions of the Recovery Plan for the Eastern Timber Wolf were developed to recover the gray wolf subspecies *Canis lupus lycaon*, commonly known as the eastern timber wolf. *C. l. lycaon* was believed to be the gray wolf subspecies historically occurring throughout the northeastern quarter of the United States east of the Great Plains (Young and Goldman 1944, Hall 1981, Mech 1974). Since the publication of those recovery plans, various studies on the subspecific taxonomy of the gray wolf have been conducted with conflicting results (Nowak 1995, 2000; Wayne *et al.* 1995; Wilson *et al.* 2000).

At the time we prepared the July 13, 2000, gray wolf reclassification proposal, new information had recently become available that called into question the identity of the large canid in southeastern Canada, an area with an extant wolf population adjacent to the northeastern United States. However, we believed that the preponderance of available data supported the position that the historical canid in the northeastern United States was a subspecies of the gray wolf, probably *Canis lupus lycaon.*

An alternative position advanced by Wilson *et al.* (2000) appears to be gaining wider acceptance. That view is that the wolf currently occurring in Algonquin Provincial Park, and possibly the ancestral wolf of southeastern Canada and the northeastern United States, is a smaller form of wolf that is similar to or indistinguishable from the red wolf (*C. rufus*). Still others argue that ecologically, the ancestral wolf in northern Maine, New Hampshire, and Vermont, where moose and woodland caribou were the predominant ungulate prey (Hall 1981), was likely to be a large-bodied *C. lupus,* rather than a smaller, deer-eating wolf such as the red wolf (Daniel Harrison, University of Maine, pers. comm.).

The coyote is the dominant canid in the northeastern United States today, although wolf genetic material is also present in these animals. Prey species' ranges in the Northeast have undergone significant changes in the last hundred-plus years as the whitetail deer has expanded north into Canada, while the

caribou has disappeared from the northeastern United States, and the moose has repopulated northern and central New England and are newly reestablished in the Adirondacks of northern New York. Changes in prey base may trigger accompanying changes in the primary predator, because smaller canids and smaller canid social groups are able to subsist on deer, but are less well suited to preying on caribou and moose. All of these changes have proceeded with surprising rapidity, as has the eastern expansion of the coyote. Clearly, it becomes extremely difficult to determine the genetic identity of the wolf (or wolves) that occurred in the Northeast prior to European settlement. Bounty records, old trapper notes, and discovery of heretofore unknown mounted specimens may hold clues that will be investigated. However, the ranges of specific forms of wolf may have changed over time or intermingled along contact zones, and scientific consensus on one ancestral form of wolf for the Northeast may not be possible.

Currently, the existing molecular genetic and morphological data suggest several plausible identities for the large canid that historically occupied the Northeast. Nowak's morphological data continue to support the contention that *Canis lupus lycaon,* a subspecies of the gray wolf, occupied part of the Northeast and adjacent southeastern Canada; however, his more recent work suggests a smaller United States range (and a possible hybrid origin) for that subspecies and a consequent larger range for the red wolf (Nowak 1995, 2000). The recent molecular genetics studies (Wilson *et al.* 2000) identify this canid as something other than a gray wolf, which they tentatively refer to as *C. lycaon.* Under this scenario the historical northeastern United States wolf could either be the red wolf (*C. rufus*) or a separate subspecies of *C. lycaon.* Due to the extreme uncertainty over wolf taxonomy, at this time we are adopting no final position on the identity of the wolf (or wolves) that historically existed in the northeastern United States. Instead, we are encouraging additional research on that question, and we are maintaining the listing of the gray wolf in the northeastern United States because there are insufficient data showing that listing to be in error.

C. Historical Range of the Gray Wolf

Until the molecular genetics studies of the last few years, the range of the gray wolf prior to European settlement was generally believed to include most of North America. The only areas that were believed to have lacked gray wolf populations are southern and interior Greenland, the coastal regions of Mexico, all of Central America south of Mexico, coastal and parts of California, the extremely arid deserts and the mountaintops of the western United States, and parts of the eastern and southeastern United States (Young and Goldman 1944, Hall 1981, Mech 1974, and Nowak 1995). (However, some authorities question the reported historical absence of gray wolves from parts of California (Carbyn *in litt.* 2000, Mech *in litt.* 2000)). Authors are inconsistent on their views of the precise boundary of historical gray wolf range in the eastern and southeastern United States. Some use Georgia's southeastern corner as the southern extent of gray wolf range (Young and Goldman 1944, Mech 1974); others believe gray wolves didn't extend into the southeast at all (Hall 1981) or did so to a limited extent, primarily at somewhat higher elevations (Nowak 1995). The southeastern and mid-Atlantic States have generally been recognized as being within the historical range of the red wolf, and it is not known how much range overlap historically occurred between these competing canids. Recent morphological work by Nowak (2000) supports extending the historical range of the red wolf into southern New England or even further northward, indicating that the historical range of the gray wolf in the eastern United States may have been more limited than previously believed. Another possibility is that the respective ranges of several wolf species expanded and contracted in the eastern and northeastern United States, intermingling along contact zones, in post-glacial times.

The results of the recent molecular genetic (Wilson *et al.* 2000) and morphometric studies (Nowak 1995, 2000) may help explain some of the past difficulties in establishing the southern boundary of the gray wolf's range in the eastern United States. It may be shown by additional genetics investigation that the red wolf, or another wolf species, historically populated the entire east coast of the United States, and the gray wolf did not occur there at all. However, until additional data convincingly show that gray wolves did not historically occur in the northeastern States, we will view the historical range of the gray wolf as including those areas north of the Ohio River, the southern borders of Pennsylvania and New Jersey, and southern Missouri; and west from central Texas and Oklahoma. This boundary is a reasonable compromise of several published accounts, being somewhat south of that shown by Nowak (2000) and north of the range boundary shown by Young and Goldman (1944) and Mech (1974). The historical range boundary we are using most closely approximates that given in Hall (1981).

D. Previous Federal Action

The eastern timber wolf (*Canus lupus lycaon*) was listed as endangered in Minnesota and Michigan, and the northern Rocky Mountain wolf (*C. l. irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). A third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), was listed as endangered on April 28, 1976, (41 FR 17740) with its known range given as ''Mexico, USA (Arizona, New Mexico, Texas).'' On June 14, 1976, (41 FR 24064) the subspecies *C. l. monstrabilis* was listed as endangered (using the nonspecific common name ''Gray wolf''), and its range was described as ''Texas, New Mexico, Mexico.''

To eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canus lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened (refer to Map 1 below, located after the *Changes from the Proposed Rules* section). In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we describe Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3 (delineated in 50 CFR 17.40(d)(1)) as critical habitat. We also promulgated special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota at that time. The depredation control portion of the special regulation was later modified (50 FR 50793; December 12, 1985); these special regulations are found in 50 CFR 17.40(d)(2).

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction projects in central Idaho and the Greater Yellowstone Area (59 FR 60252, 59 FR 60266). On January 12, 1998, a nonessential experimental population was established for the Mexican gray wolf in portions of Arizona, New Mexico, and Texas (63 FR 1752). These experimental population designations also contain special

regulations that govern take of wolves within these geographic areas (codified at 50 CFR 17.84(i) and (k)). (Refer to *Currently Designated Nonessential Experimental Populations of Gray Wolves,* section below, for more details.) We have received several petitions during the past decade requesting consideration to delist the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 States may be warranted (54 FR 16380, April 24, 1989; 55 CFR 48656, November 30, 1990; 63 FR 55839, October 19, 1998).

On July 13, 2000, we published a proposal (65 FR 43450) to revise the current listing of the gray wolf across most of the conterminous United States (Refer to Map 2 following *Changes from the Proposed Rules* section below). That proposal also included recommended wording for 3 special regulations that would apply to those wolves proposed for reclassification to threatened status. The proposal was followed by a 4-month public comment period, during which we held 14 public hearings and many additional informational meetings in those areas of the country where wolves and people would be most affected by the proposed changes.

Following the development of our July 2000 proposal, but prior to its publication, we received petitions from Mr. Lawrence Krak, of Gilman, Wisconsin, and from the Minnesota Conservation Federation. Mr. Krak's petition requested the delisting of gray wolves in Minnesota, Wisconsin, and Michigan. The Minnesota Conservation Federation requested the delisting of gray wolves in the Western Great Lakes DPS. Because the data reviews that would result from the processing of these petitions would be a subset of the review begun by our July 2000 proposal, we did not initiate separate reviews in response to those two petitions.

Subsequent to our proposal, but after the close of the comment period, we received petitions from Defenders of Wildlife to list gray wolf DPSs in the southern Rocky Mountains, northern California—southern Oregon, and western Washington, and to grant endangered status to gray wolves in those DPSs. Because wolves were already protected as endangered in those areas, we took no action on these petitions. Additionally, there are no wolf populations in those areas, and a DPS cannot be designated for an area that is unoccupied by a population of the species of concern.

Since then, we have received a petition from Mr. Karl Knuchel on behalf of the Friends of Northern Yellowstone Elk Herd Inc. Mr. Knuchel's petition requested the delisting of gray wolves in the Rocky Mountains. Because the data review that would result from the processing of this petition would be a subset of the review begun by this rulemaking, we will not initiate action on this petition until after publication of this rule.

E. Summary of Issues Related to This Final Rule

Purpose and Definitions of the Act

The primary purpose of the Act is to prevent animal and plant species endangerment and extinction. One of the ways the Act does this is to require the Service to identify species that meet the Act's definitions of endangered and threatened species, to add those species to the Federal Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12, respectively), and to plan and implement conservation measures to improve their status to the point at which they no longer need the protections of the Act. When that protection is no longer needed, we take steps to remove (delist) the species from the Federal lists. If a species is listed as endangered, we may first reclassify it to threatened status as an intermediate step before its eventual delisting; however, reclassification to threatened status is not required prior to delisting.

Section 3 of the Act provides the following definitions that are relevant to this rule:

Endangered species—Any species which is in danger of extinction throughout all or a significant portion of its range;

Threatened species—Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range; and

Species—Includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. (See additional discussion in the Distinct Population Segments Under Our Vertebrate Population Policy section, below.)

Distinct Population Segments Under Our Vertebrate Population Policy

The Act's definition of the term ''species'' includes ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, we, in conjunction with the National Marine Fisheries Service, adopted a policy governing the recognition of distinct population segments (DPSs) for purposes of listing, reclassifying, and delisting vertebrate species under the Act (61 FR 4722). This policy, sometimes referred to as the ''Vertebrate Population Policy,'' guides the Services in recognizing DPSs that satisfy the definition of ''species'' under the Act. To be recognized as a DPS, a group of vertebrate animals must satisfy tests of discreteness and significance.

To be considered discrete, a group of vertebrate animals must be markedly separated from other populations of the same taxon by physical, physiological, ecological, or behavioral factors or by an international governmental boundary that coincides with differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. A population does not have to be completely isolated by such factors from other populations of its parent taxon in order to be considered discrete.

The significance of a potential DPS is assessed in light of its importance to the taxon to which it belongs. Evidence of significance includes, but is not limited to, the use of an unusual or unique ecological setting; a marked difference in genetic characteristics; or the occupancy of an area that, if devoid of the species, would result in a significant gap in the range of the taxon.

If a group of vertebrate animals is determined to be both discrete and significant, it is then evaluated to determine whether it meets the definition of threatened or endangered based on the five listing factors (section 4(a)(1) of the Act). If it is recovered, a DPS can be delisted.

Although the Vertebrate Population Policy does not allow State or other intra-national governmental boundaries to be used in determining the discreteness of a potential DPS, a State boundary may be used as a boundary of convenience in order to clearly identify the geographic area included within a DPS designation when the State boundary incidentally separates two DPSs that are judged to be discrete on other grounds.

It is important to note that a DPS is a listed entity under the Act, and is treated the same as a listed species or subspecies. It is listed, protected, subject to interagency consultation, and recovered just as any other threatened or endangered species or subspecies. A DPS frequently will have its own recovery plan and its own recovery goals. As with a species or subspecies, a DPS recovery program is not required to seek restoration of the animal

throughout the entire geographic area of the listed entity, but only to the point at which it no longer meets the definition of a threatened or endangered species.

Distinct Population Segments and Experimental Populations

The Act does not provide a definition for the term ''population.'' However, the Act uses the term ''population'' in two different concepts—distinct population segments and experimental populations. These two concepts were added to the original Act at different times and are used in different contexts. The term ''distinct population segment'' is part of the statutory definition of a ''species'' and is significant for listing, delisting, and reclassification purposes, under section 4 of the Act. Our Vertebrate Population Policy (61 FR 4722; February 7, 1996) defines a DPS as one or more groups of members of a species or subspecies within a portion of that species' or subspecies' geographic distribution that meets established criteria regarding discreteness and significance. Congress included the DPS concept in the Act, recognizing that a listing, reclassification, or delisting action may, in some circumstances, be more appropriately applied over something less than the entire area in which a species or subspecies is found or was known to occur in order to protect and recover organisms in a more timely and cost-effective manner.

In contrast, Congress added the experimental population concept to give the Secretary another tool to aid in the conservation of ''species'' (*i.e.*, species, subspecies, or DPSs) that have already been listed under the Act. The Act also requires that an experimental population must be geographically separate from existing populations of the species. The term ''population'' as used in the experimental population program is necessarily a flexible concept, depending upon the organism involved and its biological requirements for successfully breeding, reproducing, and establishing itself in the reintroduction area.

For purposes of gray wolf reintroduction by means of experimental populations in central Idaho and Yellowstone National Park, we needed to examine the biological characteristics of the species to determine if the reintroduced wolves would be geographically separate from other gray wolf populations. We defined a wolf population to be two breeding pairs, each successfully raising two or more young for two consecutive years in a recovery area (Service 1994a). This wolf population definition was used to evaluate all wolves in the northern U.S. Rocky Mountains to determine if, and where, gray wolf populations might exist. We determined that gray wolves in northwestern Montana qualified as a wolf population under this definition and that this population was geographically separated from the potential experimental population areas. We therefore designated the two experimental population areas and began gray wolf reintroductions to establish the two experimental populations.

Because of these different purposes for experimental populations and distinct population segments, a DPS can contain several experimental populations, or a combination of experimental and nonexperimental populations.

Refer to the *Designation of Distinct Population Segments* section below, for further discussion and analysis of how our Vertebrate Population Policy has been applied in this rule.

F. Currently Designated Nonessential Experimental Populations of Gray Wolves

Section 10(j) of the Act gives the Secretary of the Interior the authority to designate populations of listed species that are reintroduced outside their current range, but within their probable historical range, as ''experimental populations'' for the purposes of promoting the recovery of those species by establishing additional wild populations. Such a designation increases our flexibility in managing reintroduced populations, because experimental populations are treated as threatened species under the Act. Threatened status, in comparison to endangered status, allows somewhat more liberal issuance of take permits for conservation and educational purposes, imposes fewer permit requirements on recovery activities by cooperating States, and allows the promulgation of special regulations that are consistent with the conservation of the species.

For each experimental population, the Secretary is required to determine whether it is essential to the continued existence of the species. If the Secretary determines that an experimental population is ''nonessential,'' then for the purposes of section 7 of the Act (Interagency Cooperation), the population is treated as a species proposed to be listed as a threatened or endangered species, except when the population occurs within areas of the National Wildlife Refuge System or the National Park System. Proposed species are subject to the advisory section 7(a)(4) conference process rather than the formal section 7(a)(2) consultation process.

The Secretary has designated three nonessential experimental population areas for the gray wolf, and wolves have subsequently been reintroduced into these areas. These nonessential experimental population areas are the Yellowstone Experimental Population Area, the Central Idaho Experimental Population Area, and the Mexican Wolf Experimental Population Area. The first two of these are intended to further the recovery of gray wolves in the northern U.S. Rocky Mountains, and the third is part of our Mexican wolf recovery program, as described in their respective recovery plans (Service 1982, 1987) (Refer to Map 1, after the *Changes from the Proposed Rules* section below.)

The Yellowstone Experimental Population Area consists of that portion of Idaho east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252; November 22, 1994).

The Central Idaho Experimental Population Area consists of that portion of Idaho that is south of Interstate Highway 90 and west of Interstate 15; and that portion of Montana south of Interstate 90, west of Interstate 15, and south of Highway 12 west of Missoula (59 FR 60266; November 22, 1994).

The special regulations for these two experimental populations allow flexible management of wolves, including authorization for private citizens to take wolves in the act of attacking livestock on private land. These rules also provide a permit process that similarly allows the taking, under certain circumstances, of wolves in the act of attacking livestock grazing on public land. In addition, they allow opportunistic noninjurious harassment of wolves by livestock producers on private and public grazing lands, and designated government employees may perform lethal and nonlethal control efforts to remove problem wolves under specified circumstances.

On January 12, 1998, we established a similar third nonessential experimental population area to reintroduce the Mexican gray wolf into its historical habitat in the southwestern States. The Mexican Gray Wolf Nonessential Experimental Population Area consists of that portion of Arizona lying south of Interstate Highway 40 and north of Interstate Highway 10; that portion of New Mexico lying south of Interstate Highway 40 and north of Interstate Highway 10 in the west and north of the Texas-New Mexico border

in the east; and that part of Texas lying north of U.S. Highway 62/180 (63 FR 1752).

This final rule will not affect any of these three existing nonessential experimental populations for gray wolves, nor will it affect the existing special regulations that apply to them.

G. Gray Wolf-Dog Hybrids

The many gray wolf-dog hybrids in North America have no value to gray wolf recovery programs and are not provided the protections of the Act. Wolf-dog hybrids, when they escape from captivity or are intentionally released into the wild, can interfere with gray wolf recovery programs in several ways. They are familiar with humans, so they commonly are attracted to the vicinity of farms and residences, leading to unwarranted fears that they are wild wolves hunting in pastures and yards. In such situations they may exhibit bold behavior patterns and show little fear of humans, leading to human safety concerns. They generally have poor hunting skills; thus, they may resort to preying on domestic animals, while the blame for their depredations is commonly and mistakenly placed on wild wolves. These behaviors, when reported in the media or spread by word of mouth, can erode public support for wolf recovery efforts. In addition, although unlikely, feral wolf-dog hybrids may mate with wild wolves, resulting in the introduction of dog genes into wild wolf populations. For these reasons, this rule does not extend the protections of the Act to gray wolf-dog hybrids, regardless of the geographic location of the capture of their pure wolf ancestors.

In recovery programs for other threatened or endangered species, hybrids and hybridization could perhaps play an important role. This decision to not extend the protections of the Act to gray wolf-dog hybrids should not be taken as an indication of our position on the potential importance of hybrids and hybridization to recovery programs for other species. Determining the importance and treatment under the Act of hybrids requires a species-by-species evaluation.

H. Conservation and Recovery of the Gray Wolf

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of ''recover'' and ''conserve'' under the Act. ''Conserve'' is defined in the Act itself (section 3(3)) while ''recovery'' is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as ''the use of all measures 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.'' Recovery is defined as ''improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.'' Essentially, recover and conserve both mean to bring a species to the point at which it no longer needs the protections of the Act, because the species is no longer threatened or endangered.

Important Principles of Conservation Biology

Representation, resiliency, and redundancy are three principles of conservation biology that are generally recognized as being necessary to conserve the biodiversity of an area (Shaffer and Stein 2000). Although the Act is not a biodiversity conservation statute, in some ways it functions as such on a single species level. Thus, we can and should apply these principles when establishing goals for individual species' recovery under the Act.

The principle of representation is the need to preserve ''some of everything''—every species, every habitat, and every biotic community—so biodiversity can be maintained. At the species level it also calls for preserving the genetic diversity that remains within a species, in order to maximize the species' ability to cope with short-term environmental variability and to adapt and evolve in response to long-term environmental change.

Redundancy and resiliency both deal with preserving ''enough to last,'' but they address it at distinctly different levels. Redundancy addresses the need for a sufficient number of populations of a species, while resiliency deals with the necessary size (numerical and geographic) of those individual populations that are needed for species' persistence over time. Larger populations are more resilient to environmental changes and other threats to their existence. The redundancy that comes from preserving multiple populations provides additional assurances of species' survival. (In the broader conservation biology context, these two principles are also applied to biotic communities and ecosystems.)

Due to the vast array of life forms that are potentially subject to the protections of the Act, and the variety of physical, biological, and cultural factors acting on them, these three principles must be applied on a species-by-species basis to determine the appropriate recovery goals. For example, addressing the need for redundancy and resiliency for nonmotile organisms, species of limited range (for example, island or insular species), or those species restricted to linear features of the environment (stream or shoreline species) should be expected to result in recovery goals that are quite different from goals developed for habitat generalist, widely distributed, and/or highly mobile species.

Application of These Principles to the Gray Wolf DPSs

Because this rule finalizes three new DPS listings for the gray wolf (see ''Designation of Distinct Population Segments'' below), we evaluated what is necessary for long-term extinction avoidance in each DPS, and the extent of progress made to date toward that goal in each DPS. This examined whether recovery is underway across a significant portion of each DPS to ensure long-term viability when that recovery is completed. Each DPS evaluation used the principles of conservation biology and focused on the size, number, makeup, and distribution of wolves in the individual DPSs, and the threats manifest there, in order to determine if the gray wolf is in danger of extinction throughout all or a significant portion of the respective DPS.

Eastern DPS

The original Recovery Plan for the Eastern Timber Wolf and the 1992 revision of that plan (Service 1978, 1992a) established and reiterated criteria to identify the point at which long-term population viability would be assured in the eastern United States (Recovery Plans for the gray wolf are discussed in more detail below). Although the 1978 Recovery Plan predated the scientific field of conservation biology, it embodied conservation biology tenets in its recovery criteria, and those criteria were carried forward unchanged in the 1992 revised recovery plan. The Eastern Timber Wolf Recovery Team was subsequently queried by the Service in 1997, and at that time the Eastern Team reviewed the criteria and found them to be adequate and sufficient to ensure long-term population viability (Peterson *in litt.* 1997).

The principles of representation, resiliency, and redundancy are fully incorporated into the recovery criteria developed by the Eastern Timber Wolf Recovery Team. The need to maintain the Minnesota wolf population is believed to be vital, because the remaining genetic diversity of gray

wolves in the eastern United States was carried by the several hundred wolves who survived in the State into the early 1970s. The Eastern Team insisted that the remnant Minnesota wolf population must be maintained and expanded to achieve wolf recovery in the eastern United States, and the successful growth of that remnant population has maximized the representation of that genetic diversity among Midwestern gray wolves. Furthermore, the Eastern Team specified that the Minnesota wolf population would increase to 1250–1400 animals, which would increase the likelihood of maintaining its genetic diversity over the long-term, and would provide the resiliency to reduce the adverse impacts of unpredictable chance demographic and environmental events. The Minnesota wolf population currently is estimated to be double that numerical goal.

The need for redundancy was clearly recognized by the Eastern Team members, and they specified that it be accomplished by establishing a second population of gray wolves in the eastern United States. They identified several potential locations for the second population. To ensure that the second population also had sufficient resiliency to survive chance demographic and environmental fluctuations, the Recovery Teams specified a minimum size that must be maintained for a minimum of five years by the second population. If the second population was isolated from the larger Minnesota wolf population, the recovery criteria required that the second population contain at least 200 wolves for a minimum of 5 years. However, if it was near the Minnesota wolf population, the 2 populations would function as a metapopulation rather than as 2 separate and isolated populations; in that case the second population would be viable if it maintained 100 wolves for at least 5 years. A metapopulation is a conservation biology concept whereby the spatial distribution of a population has a major influence on its viability. In nature many populations exist as partially isolated sets of subpopulations-termed ''metapopulations.'' A metapopulation is widely recognized by conservation biologists as being more secure over the long-term than are several isolated populations that contain the same total number of packs and individuals (Service 1994a, Appendix 9, Dr. Steven Fritts). This is because adverse affects experienced by one of its subpopulations resulting from genetic drift, demographic shifts, and local environmental fluctuations can be countered by occasional influxes of individuals and their genetic diversity from the other components of the metapopulation.

The close proximity to the larger Minnesota population would allow wolves to move between the two populations and would provide substantial genetic and demographic support for the smaller second population. Therefore, the Recovery Team specified a lower recovery goal of 100 wolves if a second population would develop in a location that would allow it to be closely tied to (that is, less than 200 miles from) the Minnesota wolf population. Such a second wolf population has developed in Wisconsin and the adjacent Upper Peninsula of Michigan. This second population is less than 200 miles from the Minnesota wolf population, and it has had a late winter population exceeding 100 animals since 1994.

As described elsewhere in this final rule, there is no convincing evidence in recent decades of another wild gray wolf population in the United States east of Michigan, so the wolves in the western Great Lakes States represents all the known gray wolf genetic diversity found in the Eastern DPS. In other words, the area in the western Great Lakes States where the wolf currently exists represents the entire range of the species within the Eastern DPS. Furthermore, the number of wolves in the Eastern DPS greatly exceeds the recovery goals of (1) a secure wolf population in Minnesota and (2) a second population of 100 wolves for 5 successive years, and thus contains sufficient numbers and distribution (resiliency and redundancy) to ensure the long-term survival of gray wolves within the DPS. The wolf's progress toward recovery in the Eastern DPS, together with the threats that remain to the wolf within the DPS, indicates that the gray wolf is not in danger of extinction in its entire range within the DPS. Moreover, the progress towards recovery of each of the two populations that comprise the metapopulation within the western Great Lakes States demonstrates that the species is not in danger of extinction in any significant portion of the range of the species within the DPS. We therefore conclude that gray wolves are no longer properly classified as endangered in the Eastern DPS.

Western DPS

Similarly, the reclassification and recovery criteria that were found in the Northern Rocky Mountain Wolf Recovery Plan (Service 1987) have been subsequently revised following peer review (Bangs 2002) to provide sufficient representation, resiliency, and redundancy to ensure the species is no longer endangered in the Western DPS when those criteria are met. Large numbers of wolves in three widely-spaced locations in the Northern U.S. Rockies achieve the desired resiliency and redundancy. Furthermore, the recovery program is based on 3 founder populations from 3 different Canadian source populations having high levels of genetic diversity (Forbes and Boyd 1997, Fritts *et al.* 1997). This has achieved sufficient representation of the genetic diversity from the closest thriving wolf populations in Canada, and allowed the Northern U.S. Rockies wolves to benefit from the local adaptions of those source populations. Additionally, the northwest Montana population remains connected to the Canadian wolf population, providing a conduit for continuing genetic exchange with wolves farther to the north. This connection is exemplified by wolves such as ''Opal,'' which was radio collared in Banff National Park in Alberta, Canada, and subsequently moved south and successfully raised pups as the alpha female of the Boulder Pack in northwestern Montana.

The three initially isolated gray wolf populations in northwestern Montana, central Idaho, and the Greater Yellowstone Area have expanded in range and increased in numbers to the point that they are no longer isolated from each other and the movement of individual wolves from one to another is becoming more common. Wolf dispersal and interbreeding has been documented between all three core recovery areas within the northern Rocky Mountains (see *Dispersal of Western Gray Wolves*). They are now functioning as a large metapopulation rather than as three isolated populations. The revised recovery criteria specify that at least 30 packs, comprising at least 300 wolves, should exist across the metapopulation's range for a minimum of 3 years. Twenty packs (200 or more wolves) across the metapopulation for 3 years would indicate the species is no longer endangered in the DPS and should be considered for reclassification to threatened status. There have been at least 300 wolves in a minimum of 30 packs since the end of 2000, and at the end of 2001 there were 563 wolves in 34 packs in the Northern U.S. Rockies. There have been over 200 wolves in at least 20 packs since the end of 1997.

The gray wolf's substantial success in meeting the revised recovery criteria for the Northern Rocky Mountains area ensures the wolf's long-term survival within its range in the Western DPS (*i.e.*, the area inhabited by the

metapopulation of gray wolves in the Northern Rocky Mountains). We conclude, based both on the wolf's recovery progress, and on our assessment of the threats that will remain once the wolf is reclassified as threatened (including the continuation of the nonessential experimental population designation and its special regulations), that the gray wolf is not in danger of extinction throughout its range within the Western DPS. Because the three initially isolated populations in the Western DPS now function as a single large metapopulation, and because there is no other population of wolves within the DPS, this conclusion applies to all parts of the wolf's range in the DPS, and so we also conclude that the wolf is not in danger of extinction within any significant portion of its range in the DPS. The gray wolf therefore is no longer endangered throughout all or a significant portion of its range in the Western DPS.

Southwestern DPS

The recovery program for the Southwestern (Mexican) gray wolf is based upon reintroductions of captive reared Mexican wolves to portions of their historical range in the Southwestern U.S. and Mexico. These captive-reared wolves are the products of a carefully managed breeding program designed to preserve the remaining genetic diversity of the historical wolves in those areas and maximize the genetic diversity in the reintroduced population. This propagation and reintroduction program ensures that the principle of representation is achieved in the Mexican wolf recovery program.

At this point, the Mexican wolf recovery program lacks a recovery goal. A prime objective of 100 self-sustaining wolves in the wild was set in the 1982 Mexican Wolf Recovery Plan (Service 1982), but the Plan states that goal is preliminary, and is focused more on assuring the survival of wolves in the Southwest and Mexico, rather than on recovering and delisting them. As more is learned about wolves and their conservation in the Southwest, the Service will endeavor to develop reclassification (endangered to threatened) and delisting criteria for the Mexican wolf. When delisting criteria are developed, they too will incorporate the principles of representation, resiliency, and redundancy to assure the long-term survival of the Mexican wolf.

However, at this time we believe their geographic distribution, low numbers and population density, and relatively low rate of population increase indicate that the Mexican wolf recovery program has not achieved sufficient redundancy and resiliency to assure the long-term survival of the gray wolf in the Southwest and Mexico. We conclude that the gray wolf continues to be in danger of extinction throughout all or a significant portion of its range in the foreseeable future in the Southwestern DPS, and it remains properly classified as endangered in the DPS except where part of a nonessential experimental population.

I. Gray Wolf Recovery Plans

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. In some cases, we appoint recovery teams of experts to assist in the writing of recovery plans and oversight of subsequent recovery efforts. Once a species no longer meets the definition of endangered or threatened it is considered to be recovered and must be delisted. Therefore, the restoration of a species throughout its historical range, or even throughout all the remaining suitable habitat, may not be necessary before a species may be delisted.

We initiated recovery programs for the originally listed subspecies of gray wolves by appointing recovery teams and developing and implementing recovery plans. Recovery plans describe criteria that are used to assess a species' progress toward recovery, contain specific prioritized actions believed necessary to achieve the recovery criteria and objectives, and identify the most appropriate parties to implement the recovery actions.

Recovery plans contain criteria that are intended to trigger our consideration of the need to either reclassify (from endangered to threatened) or to delist a species due to improvements in its status. Criteria are based upon factors that can be measured or otherwise objectively evaluated to document improvements in a species' biological status. Examples of the type of criteria typically used are numbers of individuals, numbers and distribution of subgroups or populations of the species, rates of productivity of individuals and/or populations, protection of habitat, and reduction or elimination of threats to the species and its habitat.

The reclassification and recovery criteria contained in our recovery plans must be viewed in terms of the other currently available information. In some cases, new information will demonstrate that reclassification or delisting is appropriate independent of the information in the recovery plan. For example, our knowledge of a species and its conservation needs may be incomplete when the recovery plan is prepared. The criteria are based on the best available scientific data and analysis at the time the plan is developed. However, as recovery progresses and our knowledge of a species increases, we may need to reinterpret the original recovery goals, or even add or drop one or more recovery criteria. If appropriate, and if funding and timing allow, we may revise or update recovery plans to reflect our new knowledge and modified recovery criteria. However, revision of recovery plans or recovery criteria is not a required precursor to species reclassification or delisting.

The first gray wolf recovery plan was written for the eastern timber wolf, and it was approved on May 2, 1978 (Service 1978). This recovery plan was later revised and was approved on January 31, 1992 (Service 1992a). The 1978 Recovery Plan for the Eastern Timber Wolf (Eastern Plan) and its revision were intended to recover the eastern timber wolf, *Canus lupus lycaon,* believed at that time to be the only gray wolf subspecies that historically inhabited the United States east of the Great Plains. Thus, the Eastern Plan covers a geographic triangle extending from Minnesota to Maine and into northeastern Florida. The recovery plan for the eastern timber wolf was based on the best available information on wolf taxonomy at the time of its publication. Since the publication of those recovery plans, various studies have produced conflicting results regarding the identity of the wolf that historically occupied the eastern States. Therefore, this recovery program has focused on recovering the gray wolf population that survived in, and has expanded outward from, northeastern Minnesota, regardless of its subspecific identity. (See the *Taxonomy of Gray Wolves in the Eastern United States* section above).

The Northern Rocky Mountain Wolf Recovery Plan (Rocky Mountain Plan) was approved in 1980 and revised in 1987 (Service 1980, 1987). The Rocky Mountain Plan states in its introduction that it should be understood to refer to ''gray wolves in the northern Rocky Mountains of the contiguous 48 States, rather than to a specific subspecies.'' The Rocky Mountain Plan focuses recovery efforts in Idaho, most of Montana, and Wyoming.

The Mexican Wolf Recovery Plan was approved in 1982 (Service 1982). Based on a review of Southwestern (Mexican) subspecies of the gray wolf by Bogan and Mehlhop (1983), the plan combines the historical ranges of *Canus lupus baileyi, C. l. monstrabilis,* and the

presumed extinct *C. l. mogollonensis* (which historically occurred in parts of New Mexico and Arizona) to define the portions of Arizona, New Mexico, Texas, and Mexico where recovery of the Mexican wolf would be appropriate.

J. Recovery Progress of the Eastern Gray Wolf

The 1992 revised Eastern Plan has two delisting criteria. The first criterion states that the survival of the wolf in Minnesota must be assured. We, and the Eastern Timber Wolf Recovery Team (Rolf Peterson, Eastern Timber Wolf Recovery Team, *in litt.* 1997, 1998, 1999a, 1999b), believe that this first delisting criterion remains valid. It identifies a need for reasonable assurances that future State and tribal wolf management practices and protection will maintain a viable recovered population of gray wolves within the borders of Minnesota for the foreseeable future. While there is no specific numerical recovery criterion for the Minnesota wolf population, the Eastern Plan identified State subgoals for use by land managers and planners. The Eastern Plan's subgoal for Minnesota is 1,251 to 1,400 wolves.

The second delisting criterion in the Eastern Plan states that at least one viable wolf population should be reestablished within the historical range of the eastern timber wolf outside of Minnesota and Isle Royale, Michigan. The Eastern Plan provides two options for reestablishing this second viable wolf population. If it is located more than 100 miles from the Minnesota wolf population, it would be considered ''isolated,'' and the frequency of movement of individuals and genetic material from one population to the other would likely be low or nonexistent. Such an isolated population, in order to be self-sustaining, should consist of at least 200 wolves for at least 5 years (based upon late winter population estimates) to be considered viable. Alternatively, if the second population is located within 100 miles of a self-sustaining wolf population (for example, the Minnesota wolf population), a reestablished population having a minimum of 100 wolves for at least 5 years would be considered viable. Such a smaller population would be considered to be viable, because its proximity would allow frequent immigration of Minnesota wolves to supplement it numerically and genetically.

The Eastern Plan does not specify where in the eastern United States the second population should be reestablished. Therefore, the second population could be located anywhere within the triangular Minnesota-Maine-Florida land area covered by the Eastern plan, except on Isle Royale, Michigan and within Minnesota. While the 1978 Eastern Plan identified potential gray wolf restoration areas throughout the eastern States, extending as far south as the Great Smoky Mountains and adjacent areas in Tennessee, North Carolina, and Georgia, the revised 1992 Eastern Plan dropped from consideration the more southern potential restoration areas, because recovery efforts for the red wolf were being initiated in those areas (Service 1978, 1992a).

The 1992 Eastern Plan recommends reclassifying wolves in Wisconsin and Michigan from endangered to threatened status separately, recognizing that progress towards recovery may occur at differing rates in these two States. The Plan specifies that wolves in Wisconsin could be reclassified to threatened if the population within the State remained at or above 80 wolves (late winter estimates) for 3 consecutive years. The Plan does not contain a reclassification criterion for Michigan wolves. Instead, it states that if Wisconsin wolves reached their reclassification criterion, consideration should also be given to reclassifying Michigan wolves. However, with the subsequent increase in Michigan wolf numbers, it has frequently, but unofficially, been assumed that the ''80 wolves for 3 years'' criterion also would be applied to Michigan. In other words, each State could be considered for reclassification if its wolf population reached 80 individuals or more for 3 successive years. The Eastern Timber Wolf Recovery Team used these criteria in its recommendation that the gray wolf in the western Great Lakes States be reclassified to threatened as soon as possible (Peterson *in litt.* 1997, 1998, 1999a, 1999b).

The Eastern Timber Wolf Recovery Team clarified the second population delisting criterion, which considers the wolves in northern Wisconsin and the adjacent Upper Peninsula of Michigan to be a single population. The Recovery Team stated that the numerical delisting criterion for the Wisconsin-Michigan population will be achieved when 6 successive late winter wolf surveys document that the population equaled or exceeded 100 wolves (excluding Isle Royale wolves) for 5 consecutive years (Rolf Peterson, *in litt.* 1998). Because the Wisconsin-Michigan wolf population was first known to have exceeded 100 wolves in the late winter 1993–94 survey, the numerical delisting criterion was satisfied in early 1999, based upon late winter 1998–99 data (Beyer *et al.* 2001, Wydeven *et al.* 1999).

The Eastern Plan has no goals or criteria for the gray wolf population on the 546-sq km (210-sq mi) Isle Royale, Michigan. This small and isolated wolf population is not expected to make a significant numerical contribution to gray wolf recovery, although long-term research on this wolf population has added a great deal to our knowledge of the species.

Over the last several years, the Eastern Timber Wolf Recovery Team has consistently recommended that we designate a DPS in the western Great Lakes area and proceed with reclassification of wolves in that DPS to threatened status as soon as possible. The Eastern Team recommended that the DPS include a wide buffer around the existing populations of wolves in Minnesota, Wisconsin, and Michigan. This buffer was described as lands that may not be regularly occupied by wolves but which may be temporarily used by dispersing wolves. Thus, the Eastern Team suggested the DPS also include the States of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio (Peterson *in litt.* 1997, 1998, 1999a, 1999b).

Minnesota

During the pre-1965 period of wolf bounties and legal public trapping, wolves persisted in the more remote northeastern areas of Minnesota. Estimates of population levels of Minnesota wolves prior to listing under the Act in 1974 include 450 to 700 in 1950–53 (Fuller *et al.* 1992, Stenlund 1955), 350 to 700 in 1963 (Cahalane 1964), 750 in 1970 (Leirfallom 1970), 736 to 950 in 1971–72 (Fuller *et al.* 1992), and 500 to 1,000 in 1973 (Mech and Rausch 1975). While these estimates were based upon varying methodologies and are not directly comparable, they all agree in estimating the wolf population in Minnesota, the only significant population in the Lower 48 States during those time-periods, at 1,000 or fewer animals preceding their listing under the Act.

Various population estimates in Minnesota have indicated increasing numbers after the wolf was listed as endangered under the Act. A population of 1,000 to 1,200 was estimated by L. David Mech for 1976 (Service 1978), and 1,235 wolves in 138 packs were estimated for the winter of 1978–79 (Berg and Kuehn 1982).

In 1988–89, the Minnesota Department of Natural Resources (MN DNR) repeated the 1978–79 survey, and also used a second method to estimate wolf numbers in the State. The resulting

independent estimates were 1,500 and 1,750 wolves in at least 233 packs (Fuller *et al.* 1992).

During the winter of 1997–98, a Statewide wolf population and distribution survey was repeated by MN DNR, using methods similar to those of the two previous surveys. Field staff of Federal, State, tribal, and county land management agencies and wood products companies were queried to identify occupied wolf range in Minnesota. Data from five concurrent radio telemetry studies tracking 36 packs, representative of the entire Minnesota wolf range, were used to determine average pack size and territory area. Those figures were then used to calculate a Statewide estimate of pack numbers and the overall wolf population in the occupied range, with single (nonpack) wolves factored into the estimate (Berg and Benson 1999).

The 1997–98 survey concluded that approximately 2,445 wolves existed in about 385 packs in Minnesota during that winter period. This figure indicates the continued growth of the Minnesota wolf population at an average rate of about 3.7 percent annually. The Minnesota wolf population has shown approximately this average annual rate of increase since 1970 (Berg and Benson 1999, Fuller *et al.* 1992). No rigorous survey of the Minnesota wolf population has been conducted since the winter of 1997–98, but biologists generally accept that the population has increased, and will continue to increase, perhaps at a slower rate and with occasional fluctuations (Mech 1998, Paul 2001).

Simultaneous with the increase in wolf numbers in Minnesota there has been a parallel expansion of the area in which wolves are routinely found. During 1948–53 the major wolf range was estimated to be about 31,080 sq km (11,954 sq mi) (Stenlund 1955). A 1970 questionnaire survey resulted in an estimated wolf range of 38,400 sq km (14,769 sq mi) (calculated by Fuller *et al.* 1992 from Leirfallom 1970). Fuller *et al.* (1992), using data from Berg and Kuehn (1982), estimated that Minnesota primary wolf range included 36,500 sq km (14,038 sq mi) during winter 1978–79. By 1982–83, pairs or breeding packs of wolves were estimated to occupy an area of 57,050 sq km (22,000 sq mi) in northern Minnesota (Mech *et al.* 1988). That study also identified an additional 40,500 sq km (15,577 sq mi) of peripheral range, where habitat appeared suitable but no wolves or only lone wolves existed. The 1988–89 study produced an estimate of 60,200 sq km (23,165 sq mi) as the contiguous wolf range at that time in Minnesota (Fuller *et al.* 1992), an increase of 65 percent over the primary range calculated for 1978–79. The 1997–98 study concluded that the contiguous wolf range had expanded to 88,325 sq km (33,971 sq mi), a 47 percent increase in 9 years (Berg and Benson 1999). The wolf population in Minnesota has recovered to the point that its contiguous range covered approximately 40 percent of the State during 1997–98.

Wisconsin

Wolves were considered to have been extirpated from Wisconsin by 1960. No formal attempts were made to monitor the State's wolf population from 1960 until 1979. From 1960 through 1975 individual wolves and an occasional wolf pair were reported. However, no evidence exists of any wolf reproduction occurring in Wisconsin, and the wolves that were reported may have been dispersing animals from Minnesota.

Wolf population monitoring by the WI DNR began in 1979 and estimated a Statewide population of 25 wolves at that time. This population remained relatively stable for several years, then declined slightly to approximately 15 to 19 wolves in the mid-1980s.

In the late 1980s, the Wisconsin wolf population began an increase that continues today. WI DNR intensively monitors its wolf population, using a combination of aerial, ground, and satellite radio telemetry, snow tracking, and wolf sign surveys (Wydeven *et al.* 1995, 2001a). The number of wolves in each pack is estimated based on the totality of ground and aerial observations made of the individual packs over the winter. During the winter of 2000–01, 30 of Wisconsin's 66 wolf packs (45 percent) had members carrying active radio transmitters much of the season. Twenty-seven of these monitored wolves were located 20 or more times during the mid-September to mid-April period. Five additional radio-tracked wolves were loners, and one was in an adjacent Minnesota pack. Minimum wolf population estimates (late-winter counts) for 1994 through 2001 are 57, 83, 99, 148, 178, 205, 248, and 257 animals, comprising 14, 18, 28, 35, 47, 57, 66, and 66 packs respectively (Wydeven *et al.* 2001a). WI DNR preliminarily estimated that about 320 wolves in 70 to 80 packs were in the State in late winter 2001–2002 (WI DNR 2002, Wydeven *et al.* 2002). Because the monitoring methods focus on wolf packs, it is believed that lone wolves are undercounted in Wisconsin, and that, as a result, these population estimates are probably slight underestimates of the actual wolf population within the State.

In 1995, wolves were first documented in Jackson County, Wisconsin, an area well to the south of the northern Wisconsin area occupied by other Wisconsin wolf packs. The number of wolves in this central Wisconsin area has dramatically expanded since that time. During the winter of 2000–2001, there were 34 wolves in 9 packs, plus 3 lone wolves, in and around Jackson County (Wydeven *et al.* 2001a).

During the winter of 2000–2001, 10 wolves occurred on Native American reservations in Wisconsin, and this increased to at least 13 wolves in the winter of 2001–2002 (WI DNR 2002, Wydeven pers. comm. 2002). These animals were on the Bad River (8) and Lac Courte Oreilles Reservations (5). There also is evidence of individual wolves on the Lac du Flambeau and Menominee Reservations, with a high likelihood of wolf packs developing on these reservation in the near future (Wydeven pers. comm. 2002).

Wolf numbers in Wisconsin alone greatly surpassed the second population goal of 200 animals identified in the Eastern Plan and exceeded its reclassification criterion several years ago. Although population growth nearly stalled between 1999–2000 and 2000–2001, a resumption of the steady upward trend was again quite apparent in the preliminary late-winter 2001–2002 estimate of 320. (Refer to the *Disease or predation* section below for additional discussion.)

Michigan

Michigan wolves were extirpated as a reproducing population long before they were listed as endangered in 1974. Prior to 1991, and excluding Isle Royale, the last known breeding population of wild Michigan wolves occurred in the mid-1950s. As wolves began to reoccupy northern Wisconsin, the Michigan Department of Natural Resources (MI DNR) began noting single wolves at various locations in the Upper Peninsula of Michigan. In the late 1980s, a wolf pair was verified in the central Upper Peninsula and produced pups in 1991. Since that time, wolf packs have spread throughout the Upper Peninsula, with immigration occurring from both Wisconsin on the west and Ontario on the east. They now are found in every county of the Upper Peninsula.

The MI DNR annually monitors the wolf population in the Upper Peninsula by intensive late winter tracking surveys that focus on each pack. Pack locations are derived from previous surveys, citizen reports, and ground tracking of radio-collared wolves. During the winter of 2000–2001 at least 50 wolf packs

were resident in the Upper Peninsula. Approximately 40 percent of these packs had members with active radio tracking collars (Hammill pers. comm. 2002.) Care is taken to avoid double-counting wolves, and a variety of evidence is used to distinguish adjacent packs and accurately count their members (Beyer *et al.* 2001).

These annual surveys have documented the following minimum late winter estimates of wolves occurring in the Upper Peninsula from 1994 through 2001: 57 wolves in 1994, 80 in 1995, 116 in 1996, 112 in 1997, 140 in 1998, 174 in 1999, 216 in 2000, and 249 in 2001. In recent years the annual rate of increase has been about 24 percent (MI DNR 1997, 1999a, 2001). The MI DNR estimated a minimum of 278 wolves in the Upper Peninsula in late winter 2001–2002 (MI DNR 2002).

The Upper Peninsula Michigan wolf population has exceeded the unofficial criterion of 80 animals for reclassification from endangered to threatened status. Similar to the situation in Wisconsin, the Upper Peninsula wolf population by itself has surpassed the goal of 200 wolves for a second population, as specified in the Eastern Plan.

During the winter of 1997–98, one wolf pack composed of four animals lived on lands of the Keewenaw Bay Indian Community. No other wolves are known to be primarily using tribal lands in Michigan (Hammill *in litt.* 1998).

The wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the western Great Lakes States. This population is small, varying from 12 to 29 animals over the last 15 years, and is almost completely isolated from other wolf populations (Peterson *et al.* 1998, pers. comm. 1999). For these reasons, the Eastern Plan does not include these wolves in its recovery criteria and recommends only the continuation of research and complete protection for these wolves (Service 1992a).

Although there have been reports of wolf sightings in the Lower Peninsula of Michigan, including a 1997 report of 2 large canids believed to be wolves on the ice west of the Mackinaw Bridge, there is no evidence that there are resident wolves in the Lower Peninsula. However, recognizing the likelihood that small numbers of gray wolves will eventually move into the Lower Peninsula, MI DNR has begun a revision of its Wolf Management Plan to incorporate provisions for wolf management there (see issue U, ''State Wolf Management Plans'').

Northeastern United States

Wolves were extirpated from the northeastern United States by 1900. Few credible observations of wolves were reported in the Northeast during most of the 20th century. However, in 1993 a single female wolf was killed in western Maine, and in 1996 a second wolf or wolf-like canid was trapped and killed in central Maine. Another wolf-like canid was mistaken for a coyote and killed in 1997 in northern Vermont. In early 2002 a 29 kg (64 lb) apparent wolf was killed by a trapper in southeastern Quebec, 20 miles from the New Hampshire border; tissue samples are undergoing genetic analysis. These records and other observations and signs of large, unidentified canids in Maine during recent years led to speculation that wolves may be dispersing into the northeastern United States from nearby occupied habitat in Canada. Many of the characteristics of the unidentified canids are consistent with an animal intermediate between the eastern coyote and the gray wolf. Private conservation organizations, the Maine Department of Inland Fisheries and Wildlife, the New York Department of Environmental Conservation, and the Service are continuing to seek evidence of the presence of wild wolves in northern New York and New England. However, at this time there is no firm evidence that a breeding population of wolves or wolf-like animals exists in the northeastern United States.

A recent Geographic Information System analysis evaluated the potential for wolf dispersal from southern Quebec and Ontario into the northeastern United States (Harrison and Chapin 1998). The study also estimated the amount of suitable wolf habitat present in northern New York and other New England States, and with Wydeven *et al.* (1998) evaluated the likelihood of natural wolf colonization from existing occupied wolf range in Canada. These studies, and Mladenoff and Sickley (1998), found that sufficient suitable wolf habitat is available in the Adirondack Park region of New York and in Maine and northern New Hampshire. However, the New York habitat is relatively isolated, and the authors concluded that natural recolonization is unlikely to occur there. Furthermore, while there are relatively narrow potential dispersal corridors connecting expansive wolf habitat in Maine and New Hampshire with existing wolf populations north of Quebec City, there are significant barriers to dispersal, including about 18 km (11 mi) of the St. Lawrence River, an adjacent four lane highway, rail lines, and dense human developments that may preclude the movement of a sufficient number of wolves from Canada into Maine (Harrison and Chapin 1997).

In the study on the feasibility of wolf reintroduction in the Adirondacks, Paquet *et al.* (1999) found that suitable habitat for sustaining a small population of gray wolves is present, but that habitat fragmentation within the Adirondack Park and the lack of linkages to occupied wolf areas to the north suggest that wolves would not persist there without periodic human intervention. As a result, the authors conclude that the ecological conditions in the Adirondack Park dictate against a successful reintroduction of gray wolves.

Other Areas in the Eastern United States

The increasing numbers of wolves in Minnesota and the accompanying expansion of their range westward and southwestward in the State have led to an increase in dispersing, mostly young, wolves that have been documented in North and South Dakota in recent years. An examination of skull morphology of North and South Dakota wolves indicates that of eight examined, seven likely had dispersed from Minnesota; the eighth probably came from Manitoba, Canada (Licht and Fritts 1994). Genetic analysis of an additional gray wolf killed in 2001 in extreme northwestern South Dakota indicates that it, too, originated from the Minnesota-Wisconsin-Michigan wolf population (Straughan and Fain 2002). The low potential for the establishment of a viable and self-sustaining wolf population in North and South Dakota, and the belief that all or most wolves in the Dakotas are biologically part of the Minnesota-Wisconsin-Michigan wolf population, leads us to conclude that any wolves in these States should be included in the Eastern Gray Wolf DPS.

In October 2001, a wolf was killed in north-central Missouri by a farmer who believed it was a coyote. The wolf's ear tag identified it as having originated from the western portion of Michigan's Upper Peninsula, where it had been captured as a juvenile in July of 1999.

Wolves like these and others described below in the Western DPS are expected to continue to disperse from the core recovery populations and move into areas where wolf numbers are extremely low or nonexistent. Unless they return to a core recovery population and join or start a pack there, they are unlikely to contribute to wolf recovery. While it is possible for them to disperse and encounter another wolf, mate, and even reproduce,

throughout much of the Midwest the lack of large expanses of unfragmented public land will make it difficult for wolf packs to persist in new areas without causing significant conflicts with agricultural and other human activities.

Because gray wolf recovery in the eastern United States can be achieved by restoring the species to Minnesota, Wisconsin, and Michigan, we do not intend to undertake wolf recovery programs in other areas of the Midwest. However, we may provide technical assistance to States and tribes who wish to develop wolf recovery plans beyond those which we have undertaken.

K. Recovery Progress of the Rocky Mountain Gray Wolf

In 1974, an interagency wolf recovery team was formed, and it completed the Northern Rocky Mountain Wolf Recovery Plan in 1980 (Service 1980). The Rocky Mountain Plan focuses wolf recovery efforts on the large contiguous blocks of public land from western Wyoming through Montana to the Canadian border.

The revised Rocky Mountain Recovery Plan (Service 1987) identifies a recovery criterion of 10 breeding pairs of wolves (defined as a male and female capable of reproduction) for 3 consecutive years in each of the 3 recovery areas—(1) northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public lands), (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands), and (3) the Yellowstone National Park area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public lands). The Plan states that if one of these recovery areas maintains a population of 10 breeding pairs for 3 successive years, wolves in that recovery area can be reclassified to threatened status. If 2 recovery areas maintain 10 breeding pairs (totaling about 200 adult wolves) for 3 successive years, gray wolves across the coverage area of the Rocky Mountain Plan can be reclassified to threatened status. It also states that if all 3 recovery areas maintain 10 breeding pairs for 3 successive years, the Northern Rocky Mountain wolf population can be considered as fully recovered and can be delisted. The wolf population would be about 300 adult wolves upon attainment of full recovery. The Plan also recommends that wolves be reintroduced into the Yellowstone National Park area as an experimental population. Additionally, if natural recovery has not resulted in at least two packs becoming established in central Idaho within 5 years, the Rocky Mountain Plan states that other measures, including reintroduction, would be considered to recover wolves in that area. The goals identified in the Rocky Mountain Plan are intended to ensure a well distributed and viable population in the Rocky Mountains, goals that could be met in a variety of ways while still adhering to the ''biological intent'' of the recovery plan.

Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada by the 1930s (Young and Goldman 1944). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983). Dispersing individuals occasionally reached the northern Rocky Mountains of the United States (Ream and Mattson 1982, Nowak 1983), but lacked legal protection there until 1974 when they were listed as endangered.

In 1982, a wolf pack from Canada began to occupy Glacier National Park along the United States-Canada border. In 1986, the first litter of pups documented in over 50 years was born in the Park. In recognition of the ongoing natural recovery of wolves arising from these Canadian dispersers, the Rocky Mountain Plan was revised in 1987 (Service 1987). The revised Rocky Mountain Plan recommends that recovery be focused in areas with large blocks of public land, abundant native ungulates, and minimal livestock. Three recovery areas were identified—northwestern Montana, central Idaho, and the Greater Yellowstone Area. Promotion of natural recovery was advocated for Montana and Idaho (unless no breeding pairs formed in Idaho within 5 years), but recovery in the Yellowstone area was believed to require a reintroduction program.

By 1989, we formed an interagency wolf working group, composed of Federal, State, and tribal agency personnel. The group conducted four basic recovery tasks, in addition to the standard enforcement functions associated with any take of listed species. These tasks were—(1) monitor wolf distribution and numbers, (2) control wolves that attacked livestock by either moving or killing them, (3) research wolves' relationships to ungulate prey, livestock, and people, and (4) provide accurate information to the public through reports and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective.

In 1995 and 1996, we reintroduced wolves from southwestern Canada to remote public lands in central Idaho and Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997, Bangs *et al.* 1998). We designated these wolves as nonessential experimental populations to increase management flexibility and address local and State concerns (59 FR 60252 and 60266; November 22, 1994). Wolves in northwestern Montana remain listed as endangered, the most protective category under the Act; they are not included within the nonessential experimental population areas. (Refer to the *Currently Designated Nonessential Experimental Populations of Gray Wolves* section above, for additional details.)

The reintroduction of wolves to Yellowstone National Park and central Idaho in 1995 and 1996 greatly expanded the numbers and distribution of wolves in the northern Rocky Mountains of the United States. Because of the reintroduction, wolves soon became established throughout central Idaho and the Greater Yellowstone Area. In 1995, an estimated 8 breeding pairs (using the Environmental Impact Statement (EIS) definition of a male and female successfully raising 2 pups until December 31), within a total population of about 101 individual wolves, produced pups in the northern Rocky Mountains. By 1996, a total population of 152 wolves containing 14 breeding pairs were producing pups. In 1997, 213 wolves with 20 breeding pairs produced pups. In 1998, there were 275 wolves and 21 breeding pairs. In 1999 there were 322 wolves with 24 breeding pairs. December 1999 ended the third successive year in which over 20 wolf breeding pairs successfully produced pups in the northern U.S. Rocky Mountains. In 2000 there were 433 wolves with 30 breeding pairs. As of December 2001 the wolf population was about 563 wolves, with 34 breeding pairs producing pups (Service *et al.* 2002).

The presence of 20 breeding pairs (using the EIS definition of a male and female successfully raising 2 pups) distributed in 3 recovery areas for 3 successive years, exceeded the biological criteria of having 10 breeding pairs (defining as a male and female capable of reproduction) in only 2 recovery areas as recommended in the 1987 recovery plan. For this reason the Service proposed to reclassify the wolf population in the northern Rocky Mountains and adjacent States in July

2000. Because the wolf population has continued to expand since that time, it no longer warrants listing as endangered.

Northwestern Montana

Reproduction first occurred in northwestern Montana in 1986. The natural ability of wolves to find and quickly recolonize empty habitat and the interagency recovery program combined to effectively promote an increase in wolf numbers. By 1993 the number of wolves had grown to about 55 wolves in 4 packs. However, since 1993 the number of breeding groups and number of wolves has slowed or perhaps stabilized, varying from 5 to 7 packs and from 48 to 84 wolves. The reasons for this are unknown, but are being investigated. The lack of continuing steady growth in documented wolf numbers may be due to a dramatic reduction of white-tailed deer numbers throughout northwestern Montana (Caroline Sime, Montana Dept. Fish, Wildlife and Parks, pers. comm. 1998) due to the severe winter of 1996–97, which we believe was responsible for the record high level of livestock depredations and correspondingly high level of wolf control in northwestern Montana during summer 1997. Our 1998 estimate was a minimum of 49 wolves in 5 reproducing packs. In 1999, and again in 2000, 6 breeding pairs appear to have produced pups, and the northwestern Montana population increased to about 63 wolves. In 2001, there were an estimated 84 wolves in 7 breeding pairs (Service *et al.* 2002).

Wolf conflicts with livestock have increased with the growing wolf population and with fluctuations in prey populations. For example, in 1997, following a severe winter that reduced white-tailed deer populations, wolf conflicts with livestock increased dramatically. That year alone accounted for nearly 50 percent of all the wolf livestock depredations that were confirmed and subsequent lethal wolf control actions that were taken in northwestern Montana during the period 1987–1999 (Bangs *et al.* 1998). Wolf numbers should increase as prey numbers rebound, but, for now, the need for wolf control measures has subsided. Unlike Yellowstone National Park or the central Idaho Wilderness, northwestern Montana lacks a core refugia that also contains overwintering ungulates. Therefore, wolf numbers are not ever likely to be as high in northwestern Montana as they are in central Idaho and northwest Wyoming.

Central Idaho

In January 1995, 15 young adult wolves captured in Alberta, Canada, were released in central Idaho (Bangs and Fritts 1996, Fritts *et al.* 1997, Bangs *et al.* 1998). During January 1996, an additional 20 wolves from British Columbia were released. In 1998 the population consisted of a minimum of 114 wolves, including 10 packs that produced pups (Bangs *et al.* 1998). In 1999 it had grown to about 141 wolves in 10 reproducing packs. By 2000 Idaho had 192 wolves in 10 breeding pairs and in 2001 the population was about 261 wolves in 14 breeding pairs (Service *et al.* 2002).

Greater Yellowstone Area

In January 1995, 14 wolves from Alberta, representing three family groups, were placed in 3 pens in Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997). The groups were released in late March. Two of the three groups produced young in late April. In January 1996, this procedure was repeated with 17 wolves from British Columbia, representing 4 family groups, for release in early April. Two of those groups produced pups in late April. Furthermore, as the result of a September 1996 wolf control action in northwestern Montana, 10 5-month-old pups were transported to a pen in the Park. These pups and 3 adults from the Greater Yellowstone Area, which were originally reintroduced from Canada, were released in spring 1997. By 1998, the Greater Yellowstone Area population consisted of 112 wolves, including 6 packs that produced 10 litters of pups. The 1999 population consisted of 118 wolves, including 8 breeding pairs. In 2000 Yellowstone had 177 wolves, including 14 breeding pairs, and there were 218 wolves, including 13 breeding pairs, in 2001 (Service *et al.* 2002).

Dispersal of Western Gray Wolves

Significant numbers of pups (9 in 1995, 25 in 1996, 99 in 1997, and steadily increasing to about 150 in 2000, and nearly 200 in 2001 and 2002) born to reintroduced wolves are becoming sexually mature and are dispersing from their natal packs. Because dispersing wolves may travel extensively and often settle in areas without resident packs, we expect that these wolves will continue to initiate significant expansion in the number and distribution of wolf packs in the northern Rocky Mountains. Dispersal will increase management costs and controversy, because many of these wolves will not be radio-collared and will attempt to colonize areas of private land used for livestock production. This geographic expansion of wolf presence will also increase the amount of needed agency wolf control, particularly lethal control. Wolves that disperse southward in central Idaho and the Greater Yellowstone Area will increasingly encounter the full range of domestic livestock, including sheep, which are more susceptible to predation and multiple-mortality incidents than are other domestic livestock (Bangs *et al.* 1995, Fritts *et al.* 1992).

We predicted that these three populations eventually would expand and begin to overlap, resulting in one meta-population of gray wolves in the northern U.S. Rocky Mountains. In 1994 we believed that the most likely direction for wolf dispersal and population growth would be from northwestern Montana southward into the experimental areas. Wolves most commonly disperse toward other wolves even when separated by great distances, and we speculated that the presence of reintroduced wolves in the central Idaho and Yellowstone experimental areas would increase the likelihood for wolf dispersal into those areas from northwestern Montana. At that time, we believed that wolves in the northwestern Montana recovery area would be the first to reach 10 breeding pairs. We now believe that the severe winter of 1996–97 temporarily depressed the number of wolves in northwestern Montana and limited the number of dispersal-aged wolves in that area (Service 1994a, Bangs *et al.* 1998).

In contrast, the wolves reintroduced into central Idaho and Yellowstone have increased their numbers greatly, and nearly two-thirds of those wolves are young, dispersal-aged animals that may move from those areas over the next several years. We now believe that wolves that are offspring of the reintroduced animals will increasingly disperse into northwestern Montana and elsewhere. A recent study of wolf genetics among wolves in northwestern Montana and the reintroduced populations found that wolves in those areas were as genetically diverse as their source populations in Canada and that genetic diversity was not a wolf conservation issue in the northern Rocky Mountains at this time (Forbes and Boyd 1997). To date, from radio telemetry monitoring we have documented routine wolf movement between wolves in Canada and northwestern Montana, occasional wolf movement between wolves in Idaho and Montana, and at least two wolves that have traveled into Idaho from northwestern Wyoming. Additionally,

in 2001–2002 a wolf from Yellowstone dispersed 240 km (150 mi) into northwestern Montana, and a wolf from Idaho dispersed over 480 km (300 mi) to northwestern Wyoming. Since two-thirds of the wolf population is not radio-collared, additional dispersal has undoubtedly occurred in addition to that documented by radio-collared wolves. Because of the long dispersal distances and the relative speed of natural wolf movement between Montana, Idaho, and Wyoming, we anticipate that wolves will continue to maintain high genetic diversity in the three States. If significant genetic concerns do arise at some future time, our experience with wolf relocation shows that we could effectively remedy those concerns with occasional wolf relocation actions.

We also anticipate additional movement of wolves from the northern U.S. Rockies and Canada into western Washington and Oregon and into the Cascade Range. For example, one radio-collared wolf from northwestern Montana was found dead in 1994 from unknown causes in eastern Washington, and a radio-collared young female wolf from central Idaho dispersed into eastern Oregon in early 1999. She was recaptured and returned to the Central Idaho Recovery Area where she would have a better opportunity to find a mate. Since 1999, 2 other dead wolves (1 radio-collared in Idaho and one not radio-collared) were found in eastern Oregon. These wolves were killed by a vehicle collision and an illegal shooting, respectively. Furthermore, suitable habitat and prey conditions exist in other areas to which wolves may be able to disperse from current populations. Given that wolves in the northern Rocky Mountains have dispersed over 800 km (500 mi), it is reasonable to assume that occasional but routine wolf dispersal will continue to occur within 400 km (250 mi) of the current boundaries of the wolf population.

Observation data indicate that the wolves outside of the core recovery areas mostly occur as individuals, although several wolf family units have been reported in the North Cascades (Almack and Fitkin 1998). However, because efforts to locate family units have been unsuccessful, we are not sure whether wolves are reproducing in the North Cascades. Under this final rule, any animals outside the core recovery areas are protected by the Act as threatened wolves, and we will continue to provide protection recommendations for den and rendezvous sites to Federal agencies on a site-specific basis.

While habitat that could support wolves certainly exists in several areas, we have no plans to initiate new wolf restoration efforts for any areas in the western United States outside of those already underway in Montana, Idaho, Wyoming, and the southwestern States. However, this final rule continues the protections of the Act for any wolves in the wild within all States that are included within the boundaries of the Western DPS. Therefore, any new gray wolf restoration programs undertaken by States or tribes within the boundaries of the DPS would benefit from the protections of the Act as long as the DPS remains listed as threatened.

While we have no plans to actively pursue wolf restoration in other areas of the Western DPS, we will not act to routinely prevent natural wolf recolonization in such areas. Wolves that naturally disperse into other States will be managed on a case-by-case basis, and we have the authority to manage these wolves. Generally, if there are no conflicts with human activities, such wolves will likely not be returned to the area of their origin. If wolves move outside of the recovery areas and depredate livestock, they will be killed rather than moved. In addition, States or tribes considering wolf restoration planning for lands under their jurisdiction may request us to provide technical assistance for those efforts.

Reclassification and Recovery Goals for the Northern U.S. Rocky Mountains

The criteria for threatened and recovered wolf populations in the northern Rocky Mountains have been the subject of intense interest and several peer review efforts (Fritts and Carbyn 1995). The 1987 Northern Rocky Mountain Wolf Recovery Plan (Service 1987) defined a recovered wolf population as securing and maintaining a minimum of 10 breeding pairs in each of 3 recovery areas for a minimum of 3 successive years. A breeding pair was defined as ''Two wolves of opposite sex and adequate age, capable of producing offspring.'' Recovery areas were relatively small and separate areas in northern Montana, central Idaho, and the Greater Yellowstone Area.

The 1994 environmental impact statement (EIS) review (Appendix 9, in Service 1994a) indicated that the 1987 recovery goal was, at best, a minimal recovery goal, and that modifications were warranted on the basis of more recent information about wolf distribution, connectivity, and numbers. Fritts (Appendix 9, in Service 1994a) specifically reviewed the issue of a viable wolf population in the EIS on wolf reintroduction. He concluded that ''Thirty or more breeding pairs comprising some +300 wolves in a metapopulation with genetic exchange between subpopulations should have a high probability of long-term persistence.'' Further, Fritts stated, ''My conclusion is that the 1987 wolf recovery plan's population goal of 10 breeding pairs of wolves in 3 separate recovery areas for 3 consecutive years is reasonably sound and would maintain a viable wolf population into the foreseeable future. The goal is somewhat conservative, however, and should be considered minimal.'' In his review, a breeding pair was defined as ''An adult male and an adult female wolf that have produced at least 2 pups that survived until December 31 of the year of their birth, during the previous breeding season.'' His review was based upon abutting recovery areas that were much larger than those recommended in the 1987 plan. This proximity would allow wolves to occasionally move from one recovery population to another, thus producing the metapopulation structure that was inherent to Fritts' analysis, but was absent from the 1987 Recovery Plan goal.

The Service (Bangs 2002) conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002. Relevant literature was reviewed, and responses were received and evaluated from 50 of 88 experts contacted. That review showed that there is a wide variety of professional opinion about wolf population viability. However, that review supported and reaffirmed Fritts' earlier conclusions that 30 breeding pairs of wolves (using Fritts' definition of a breeding pair) widely distributed in a metapopulation structure (that is, populations within dispersal distance to promote movement between recovery populations) throughout the mountainous portions of Montana, Idaho, and Wyoming for 3 successive years would exceed the minimum biological requirements of a viable and recovered wolf population. The experts also compared the 1987 recovery plan recommendation of a recovered wolf population with Fritts' recommendation and concluded that Fritts' definition was more likely to define a viable wolf population than the 1987 recovery plan definition.

Therefore, in place of the 1987 Recovery Plan goal, we have adopted the definition of wolf population viability and recovery developed in the 1994 EIS (Service 1994a). That definition is ''Thirty breeding pairs of wolves (defined as an adult male and an adult female that raise at least 2 pups until December 31 of the year of their birth), comprising some +300

individuals in a metapopulation with some genetic exchange between subpopulations, for three successive years.''

A minimum of 30 breeding pairs was first documented in 2000, and a minimum of 34 breeding pairs was documented in 2001. We fully expect to confirm in early 2003 that the wolf population in the northern Rocky Mountains will have again exceeded 30 breeding pairs in 2002, thus achieving the wolf population recovery goal. At that point the Service could propose to delist the wolf population.

The 1987 recovery plan recommended that wolves be downlisted to threatened status throughout the northern Rocky Mountains at the time each of 2 recovery areas had maintained a minimum of 10 breeding pairs for 3 successive years. In 2000, when the Service proposed to reclassify these wolves to threatened status, the year 2000 was the fourth successive year of having 20 or more breeding pairs in the northern Rocky Mountains. The Service considered this to fully meet the intent of the downlisting goal. Since that time, the wolf population has continued to grow even larger and should no longer be considered endangered.

L. Recovery Progress of the Southwestern (Mexican) Gray Wolf

The objectives of the Mexican Wolf Recovery Plan (Service 1982) are to maintain a captive breeding program and to reestablish a population of at least 100 Mexican wolves within its historical range. The plan contains no numerical criteria that would support either revision of the endangered status of the Mexican wolf to threatened or delisting. We consider the current recovery plan objective for the wild population to be an essential first step toward the eventual recovery of the Mexican wolf. A revised recovery plan for the Mexican wolf will contain numerical criteria for reclassifying to a threatened status and for delisting. Because recovery of the Mexican wolf is in its very early stages, we are establishing a Southwestern Gray Wolf DPS, but we are making no changes to the protective legal status of the Mexican gray wolf at this time.

Through managed breeding, the captive population of Southwestern (Mexican) gray wolves had increased to 247 animals as of August 2002. Forty-five zoos and wildlife sanctuaries throughout the United States and Mexico cooperate in the maintenance and breeding of the captive wolves. The Blue Range Wolf Recovery Area (BRWRA), an 18,000-sq km (7000-sq mi) area, has been designated for the re-establishment of a wild population of at least 100 wolves. This area includes all of the Apache and Gila National Forests in eastern Arizona and western New Mexico.

Re-establishment of a wild population began with the release of 13 captive-reared Mexican gray wolves in eastern Arizona in 1998. Releases have occurred each year since then, and as of August 2002, an additional 61 wolves, including uncollared pups, had been released in the BRWRA. A minimum of 24 Mexican wolves representing 8 packs were free-ranging in the wild as of January 2003. During 2002, we documented surviving wild-conceived offspring from the past 3 breeding seasons and documented the production of the first second-generation wild-conceived, wild-born offspring. Efforts are ongoing to capture uncollared wolves living in the population. The documentation of the birth of second-generation wild-born offspring and breeding pairs forming on their own are both key signs that a Mexican wolf population is establishing itself in the BRWRA. Additional releases are planned to occur as they are needed to reach the current goal of a wild population of 100 wolves. This reintroduced population of wolves, like those in central Idaho and the Greater Yellowstone Area, has been designated nonessential experimental (63 FR 1752–1772, January 12, 1998); these wolves can be legally killed by ranchers if the wolves attack livestock on private land. Other provisions of the special regulation designating the population as nonessential experimental give agency managers flexibility to address wolf-human conflicts. Defenders of Wildlife, a private conservation organization, compensates ranchers whose livestock are killed by these wolves.

Designation of Distinct Population Segments

Previously, the gray wolf was listed as threatened in Minnesota and as endangered in the other 47 conterminous States, effectively establishing a Minnesota DPS that was delimited by State boundaries in the absence of any other indications of discreteness (Map 1). This separate designation of Minnesota gray wolves as threatened was established in 1978, before our adoption of the 1996 Vertebrate Population Policy (61 FR 4722, February 7, 1996); this final rule brings the current listing of the gray wolf into compliance with the policy.

As discussed above in the *Distinct Population Segments Under Our Vertebrate Population Policy* section, our Vertebrate Population Policy requires that we consider the concepts of ''discreteness'' and ''significance'' when deciding if a vertebrate population meets the requirements for a DPS designation. If the population is determined to be discrete and significant, then we evaluate the conservation status of the population to determine if it is threatened or endangered. The discussion of discreteness and significance for each DPS follows the descriptions of the geographic area included in each DPS.

Based on the Vertebrate Population Policy, this rule reclassifies the gray wolf by establishing the following 3 DPSs within the conterminous 48 States (Map 3).

Eastern Gray Wolf Distinct Population Segment. Consisting of gray wolves within the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine; and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area. This DPS includes all the areas that we proposed in July 2000 for the Western Great Lakes DPS and the Northeastern DPS, as well as 12 additional States.

Western Gray Wolf Distinct Population Segment. The exterior boundary of the Western DPS encompasses the States of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70. Gray wolves in this geographic area are included in the Western DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Western DPS.

Southwestern Gray Wolf Distinct Population Segment. The exterior boundary of the Southwestern DPS encompasses the States of Arizona, New Mexico, Utah south of U.S. Highway 50, Colorado south of Interstate Highway 70, those parts of Oklahoma and Texas west of Interstate Highway 35, and Mexico. Gray wolves in this geographic area are included in the Southwestern DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Southwestern DPS.

Discreteness. To date, we have no evidence that any wolves from any of these DPSs have dispersed across these DPS boundaries, although we expect

such dispersals to occur. The current gray wolf populations within each of these DPSs are separated from the gray wolf populations in the other DPS by large areas that are not occupied by breeding populations of resident wild gray wolves. Although small numbers of dispersing individual gray wolves have been seen in some of these unoccupied areas, and it is possible that individual dispersing wolves can completely cross some of these gaps between occupied areas and may therefore join another wolf population, we believe that the existing geographic isolation of wolf populations in each of these three DPSs from the other far exceeds the Vertebrate Population Policy's criterion for discreteness of each DPS. (Refer to the *Change to the Boundary Between the Western DPS and the Southwestern DPS* section, below, for additional discussion on establishing these DPS boundaries.)

The Vertebrate Population Policy allows us to use international borders to delineate the boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will continue to use the United States-Canada border to mark the northern portions of the boundaries of the Western and Eastern DPSs due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries. In general, wolf populations are more numerous and wide-ranging in Canada; therefore, wolves are not protected by Federal laws in Canada and are publicly trapped in most Canadian provinces.

Along our border with Mexico, the situation is quite different. Gray wolves have been extirpated, or nearly so, from Mexico. However, the captive animals that have been used to start the Mexican wolf recovery program in the United States are of Mexican origin, and Mexico is closely cooperating with the Service in the Mexican wolf recovery program in a number of ways. The current Mexican Wolf Recovery Plan (1982) is a bi-national recovery plan, signed by both the U.S. and Mexico. This bi-national recovery effort will continue with plans for Mexico and the Service to jointly revise the bi-national recovery plan for the Mexican wolf. Because of the cooperative gray wolf conservation efforts we have with Mexico across our southern border, our Southwestern DPS does not end at the Mexican border, but rather it includes all historical gray wolf range in Mexico.

Significance. We further believe that all three of these wolf populations satisfy the significance criterion of the Vertebrate Population Policy under examples 2 and 4, as provided in the Policy—significant range gaps and genetic characteristics.

In our Vertebrate Population Policy, example 2 states that ''evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon'' shows that the population meets the significance criterion. Loss of the discrete wolf populations in either the Eastern DPS, the Western DPS, or the Southwestern DPS would clearly produce huge gaps in current gray wolf distribution in the 48 States.

Our Vertebrate Population Policy also states (example 4) that ''[E]vidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics'' is another indication that the population satisfies the significance test. Although genetic studies are continuing, and the subspecific taxonomy of the gray wolf remains to be conclusively determined, several studies agree that these three recovery programs are recovering different evolutionary lineages of the gray wolf (Bogan and Mehlhop 1983, Nowak 1995, Wilson *et al.* 2000). Even various gray wolf subspecies maps, which show vastly different numbers and ranges of subspecies and are still being disputed, all agree that the wolves currently being recovered in the Midwest, the northern U.S. Rockies, and in the Southwest are of different subspecific origins (Bogan and Mehlhop 1983, Hall 1981, Nowak 1995, 2000, Young and Goldman 1944). At a minimum, even if these three groups of gray wolves are not separate subspecies, strong indications suggest that they are separate reservoirs of diversity that differ from each other and therefore are significant to the species (Bogan and Mehlhop 1983, Nowak 1995, Wilson *et al.* 2000).

The existence of large areas of potentially suitable wolf habitat and prey resources in parts of northern New York and northern New England, occurrence records of a few wolves or wolf-like canids during the 1990s, and the presence of wolf populations in neighboring areas of eastern Canada caused us to propose a DPS for the gray wolf in the Northeast (Map 2). At the time of the proposal, we had limited information on extant wolves in the Northeast, and we specifically requested additional data and other information on Northeastern wolves. However, no new data were provided to substantiate that a wolf population exists in the Northeast.

A wolf population must exist in an area in order for us to designate it as a DPS. Therefore, as discussed above in the *Taxonomy of Gray Wolves in the Eastern United States* section, we do not have sufficient data on the identity of historical northeastern United States wolves or the current existence of wolves in the Northeast to support the designation of a DPS there. However, we are retaining the listing of gray wolves in these States under the Act in order to preserve the ability to protect wolves that may occur there. Because a separate DPS cannot be designated in the Northeast due to the lack of evidence of an extant wolf population, this area is being combined with the proposed Western Great Lakes DPS and with other States, and is being designated as part of the Eastern Gray Wolf DPS. The future possibility of establishing a Service wolf recovery program in the Northeast remains possible if it is demonstrated to be necessary for the recovery of a wolf ''species,'' as defined in the Act.

We emphasize that the expansion of the boundaries of these three DPSs from our July 2000 proposal does not reflect any intent of the Service to expand our current gray wolf recovery programs beyond their current geographic areas, or to initiate new gray wolf restoration efforts in these DPSs.

Peer Review

In accordance with our longstanding practice and with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review (Peer Review Policy), we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that our decision is based on scientifically sound data, assumptions, and analyses, including input from appropriate experts and specialists.

Our Peer Review Policy requires that we solicit expert opinions of three independent specialists. Because of the complexity, geographic scope, and expected controversial nature of the proposed actions, we requested reviews from 14 independent experts and received comments from 11 of them during the comment period. We contacted individuals who possess expertise on gray wolf biology and ecology, threats to wolves, and wolf health and diseases. In order to adhere to the Policy's requirement for independent reviewers, this peer review did not use employees of the Service, or of States that have a significant stake in the outcome of this rulemaking. The reviewers that we chose are from Alaska and Canada, as well as from across wolf range in the conterminous States. They

were asked to review the proposed rule and the supporting data, and to point out any mistakes in our data or analysis, and to identify any relevant data that we might have overlooked. We have incorporated their comments into the final rule, as appropriate, and have briefly summarized their observations below.

Of the peer reviewers who specifically expressed support for, or opposition to, our various proposed actions, all supported the DPS approach, that is, dividing the current listing into smaller geographic units that better reflect recovery progress and recovery needs, and providing the protections that are appropriate to that progress and those needs. All but one supported reclassification of the wolves in the western Great Lakes area to threatened status, and that dissenting reviewer recommended that we go a step further and delist those wolves instead of reclassifying them. Most peer reviewers supported reclassification of the Northern Rocky Mountain wolf population to threatened, but one questioned whether this is appropriate before the reclassification criteria of the 1984 Recovery Plan have been achieved. Another reviewer supported reclassification of the Western DPS, but stated that delisting should not occur until each of the 3 recovery segments exceed 10 breeding pairs. One reviewer suggested reducing the recovery goal for northwestern Montana to fewer than 10 breeding pairs.

Of those who specifically commented on it, all peer reviewers supported the proposed establishment of a separate Northeastern DPS. There was general support for gray wolf delisting in areas where wolf restoration was not necessary and not feasible, but there was some disagreement on where those areas were. Delisting in the Southeast was supported, but delisting in California and Nevada was opposed by two reviewers. Delisting the Dakotas (instead of reclassifying to threatened, as we proposed) was recommended by one reviewer. Five of the reviewers also recommended that the southern Rocky Mountains (Colorado, Utah, and the northern parts of Arizona and New Mexico) either be established as a separate DPS, or be included in the proposed endangered Southwestern (Mexican) DPS rather than in the threatened Western DPS. One reviewer recommended that a Northwestern DPS be established, composed of California and the western halves of Washington and Oregon.

Numerous suggestions for technical corrections were provided by the peer reviewers, and they also pointed out parts of the proposal that needed clarification.

The recommendations of the peer reviewers, as well as the comments we received from other sources during the comment period, are discussed in the following section. We also provide explanations for why the recommendations were, or were not, adopted in our final decision.

Summary of Comments and Recommendations

In our July 13, 2000, proposed rule and associated notifications, we requested that all interested parties submit comments, data, or other information that might aid in our decisions or otherwise contribute to the development of this final rule. The comment period for the proposed rule was open from July 13, 2000, through November 13, 2000. During that period we publicized and conducted 14 public hearings and numerous public informational meetings in order to explain the proposal, respond to questions concerning gray wolf protection and recovery, and receive input from interested parties. We contacted appropriate Federal, State, and tribal agencies, scientific organizations, agricultural organizations, outdoor user groups, environmental organizations, animal rights groups, and other interested parties and requested that they comment on the proposal. We conducted two national press conferences to promote wide coverage of our proposed rule in the print media, and we published legal notices in many newspapers across the range of the gray wolf announcing the proposal and hearings, and inviting comments. We posted the proposal and numerous background documents on our Web site, and we provided copies upon request by mail or E-mail and at our hearings and informational meetings. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at public hearings, by letter, E-mail, facsimile, or on our Web site.

During the 4-month comment period and at our 14 public hearings we received nearly 16,000 separate comments, including comments from 329 individuals who spoke at public hearings and comments from 11 peer reviewers. We also received form letters and ''petitions'' with over 27,000 additional signatures. Comments originated from addresses in all 50 States, including the District of Columbia.

We revised and updated the proposed rule in order to make the final rule reflect comments and information we received during the comment period. In the following paragraphs we address the substantive comments that we received concerning various aspects of the proposed rule. Comments of a similar nature are grouped together under subject headings (referred to as ''Issues'' for the purpose of this summary) below, along with our response to each. In addition to the following discussion, refer to the *Changes from the Proposed Rule* section (also below) for more details.

A. Technical and Editorial Comments

Issue 1: Numerous technical and editorial comments and corrections were provided by respondents, including the peer reviewers. Clarification and consistent usage of terms such as ''public lands,'' ''tamed,'' ''domesticated,'' and ''breeding pair'' was recommended.

Response: We have corrected and updated numbers and other data wherever appropriate. Wolf population estimates made during 1999 have been replaced with the final numbers calculated in late December 2001. We also clarified numerous discussion points and have provided clearer terminology in several locations. We have substituted ''domesticated'' for ''tamed'' and have standardized our use of the phrase ''breeding pair.''

Issue 2: Commenter pointed out inconsistencies between the text of the proposed Western DPS 4(d) rule, the text explaining that proposed rule, and the table that compared it to the experimental populations special rules and the normal protections of the Act. In addition, the phrase ''public land'' is used several times in the table but is not defined there.

Response: We have revised the table, the explanatory text, and the wording of that 4(d) rule to make sure they are consistent. For example, as defined in the 4(d) rule, the term public lands refers only to federally administered lands unless specifically defined otherwise in State or tribal wolf management plans (see issue U, ''State Wolf Management Plans''). Other public lands such as city, county, or State lands would be treated the same as private land for the purposes of wolf management under the Western DPS 4(d) rule.

B. Compliance With Laws, Regulations, and Policies

Issue 1: Commenters expressed concern that the proposal was not in compliance with the Act and implementing regulations.

Response: We have carefully reviewed the requirements of the Act and its implementing regulations. We believe this final rule, as well as the process by which it was developed and finalized, complies with all provisions of the Act and applicable regulations. The Act requires that we identify and protect species that are endangered or threatened, develop and implement recovery programs for those species, and delist them when they are no longer threatened or endangered. These actions are not discretionary, but are mandated by the Act. We do this to the extent possible under the funds appropriated to us each year and in accordance with priorities established by Congress, and by us pursuant to the provisions of the Act. However, the Act does not require us to restore a species across its historical range, or to all remaining areas of suitable habitat. Rather, we restore it to the point that the threats to its continued existence are reduced to the point that it no longer is threatened or endangered. Our detailed analysis of the threats for each DPS is found in the *Summary of Factors Affecting the Species* section below.

Issue 2: A number of commenters stated that establishing numerical quotas for endangered or threatened species is contrary to the intent of the Act and that we should not use such quotas in reclassification or delisting decisions for the gray wolf.

Response: The Act (section 4(f)(1)) requires us to develop recovery plans that contain ''objective, measurable criteria'' that we are to use in making our determination of whether a species is recovered or is making significant progress toward recovery. Our longstanding practice is to include numerical criteria in our recovery plans as one means to trigger consideration of delisting or reclassification. However, we agree with the commenters that these numerical criteria should not be the sole basis for delisting or reclassification decisions. As required by the Act (section 4(a)(1)), we also conduct an evaluation of the factors (threats) that currently affect the species and the factors that would impact the species, or would increase their impact, if the species were to be delisted or reclassified.

Issue 3: Other commenters questioned our compliance with the Vertebrate Population Policy and stated that we must list more DPSs in order to comply with that Policy.

Response: The Act gives us the authority to list by species, subspecies, or DPS. However, Congress directed that we use our authority to list by DPS sparingly. The DPS policy identifies the criteria that must be met for a vertebrate group to qualify as a DPS, but it does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria. The Service has the discretion to list, reclassify, or delist at the subspecies or species level instead of the DPS level, as we believe to be most appropriate to carry out our listing and recovery programs.

Issue 4: The Service should reclassify and delist the wolf on a State-by-State basis.

Response: The previous listing of the gray wolf, in which wolves in Minnesota were listed as threatened while wolves in adjacent States, including Wisconsin, are endangered, was done prior to our 1996 Vertebrate Population Policy, and that previous listing did not conform to the 1996 Policy. The Policy states that listings not in conformance with the Policy will be brought into conformance whenever the listing status of that taxon is changed.

While the policy allows us to use boundaries between States as boundaries of convenience between two populations if those populations are already discrete in relation to each other, we cannot use a boundary between States to subdivide a single biological population in an effort to artificially create a discrete population. Thus, although Minnesota wolves were listed separately in the past, we no longer list, or delist, them separately from the Wisconsin-Michigan wolf population because they are not biologically discrete. By reclassifying wolves throughout the Midwest from endangered to threatened status and joining them into a single DPS, we have brought the listing into conformance with the Vertebrate Population Policy and given the overall Midwest wolf population a threatened designation, which is biologically more appropriate than is an endangered designation.

Issue 5: One respondent believes that the proposal was in conflict with our mission statement, which is ''working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.''

Response: We believe the proposal portrays an example of doing exactly what is intended by our mission statement. Gray wolf recovery programs involve many partners in the private and public sector, at all levels of government, and include numerous Federal agencies. The wolf recovery successes described in the proposal resulted from working with others to conserve, protect, and enhance gray wolf populations in several areas across their historical range. Those successes have now reached a point where several of those wolf populations no longer qualify for protection as endangered, so we are reclassifying them to threatened. Congress, through its enactment of the Endangered Species Act of 1973, stated that such programs benefit our nation and the American people. Furthermore, we have provided extensive opportunities and numerous pathways for all interested parties to become involved in the reclassification process.

Issue 6: A commenter believes that the proposal is not in compliance with our National Policy Issuance 96–06, which is also known as the ''10-point Plan for the Endangered Species Act.''

Response: The relevant points in this March 6, 1995 policy are these: base our listing/delisting decisions on sound and objective science; minimize social and economic impacts of our actions; treat landowners fairly and with consideration; promptly recover and delist threatened and endangered species; and provide State, tribal and local governments with opportunities to play a greater role in carrying out the provisions of the Act. To the extent allowed by the Act and other Federal laws and regulations, we have conducted gray wolf recovery and reclassification in a manner that fully adheres to the points of this Policy. We have used the best available scientific data, we have developed special regulations and depredation control programs that reduce social and economic impacts, we are reclassifying and intend to delist at the appropriate time, and we have provided State, tribal, and other governments many opportunities to participate in wolf recovery and in this rulemaking. In many ways, gray wolf recovery and this reclassification is an excellent example of following National Policy Issuance 96–06.

Issue 7: The proposal was not in compliance with National Policy Issuance 95–03 and Director's Order No. 110, both dealing with using the ''ecosystem approach.''

Response: This 1995 Policy and 1999 Order state that the Service will apply an ecosystem approach in carrying out our programs for fish and wildlife conservation. The goal of an ecosystem approach is for the Service, when carrying out its various mandates and functions, to strive to contribute to the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems.

Preserving and recovering endangered and threatened species is one of the more basic aspects of an ecosystem approach to conservation. Successful

recovery of a rare species requires that the necessary components of its habitat and ecosystem be conserved, and that diverse partnerships be developed to ensure the long-term protection of those components. Thus, the recovery success demonstrated for gray wolves is also a demonstration of the ecosystem approach, including the various partnerships that are needed for success.

Issue 8: The Service has not adequately consulted with Native American tribes, as required by Secretarial Order 3206. (Refer to issue V, Native American Concerns, below, for additional Native American concerns.)

Response: During the development of the proposal and this final rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. Although we must base the decision on whether a species should be listed, reclassified, or delisted under the Act purely on scientific data concerning the threats and commercialization of the species, the manner in which we carry out listing, reclassification, or delisting vary so that we can address the cultural and spiritual importance of a species to Native Americans. As we have become aware of Native American concerns through consultation with them, we have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes.

For example, the proposed 4(d) rule for lethal control of depredating wolves in Wisconsin and Michigan has caused concern among several tribes that have, or expect to soon have, wolves living on their reservations. We are currently working with the Bad River Band and the WI DNR to develop a Memorandum of Understanding for the cooperative management of wolves in the area surrounding the Bad River Reservation (Wisconsin), in order to minimize the impacts that off-reservation depredation control actions by the WI DNR might have on reservation wolves. This agreement may serve as a prototype for other tribes and States.

We acknowledge that our early consultation efforts could be improved. Early consultation efforts were hampered primarily by the geographic scope and complexity of the proposal. We tried to remedy this issue by making additional efforts to contact and inform tribes during the comment period.

Issue 9: The Service should propose critical habitat for the gray wolf.

Response: Critical habitat was designated in 1978 for the gray wolf in parts of northeastern and north-central Minnesota and on Isle Royale, Michigan (43 FR 9607, March 9, 1978). We are not making any changes to the currently designated critical habitat, because we do not believe it is appropriate to do so.

The Endangered Species Act amendments of 1982 specified that, for any critical habitat designation for a species already listed as threatened or endangered at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, designation of critical habitat for the gray wolf is subject to the procedures for revisions to critical habitat. As such, it is not mandatory for the Service to designate critical habitat for the gray wolf. Section 4(a)(3)(B) provides that the Service ''may'' make revisions to critical habitat ''from time-to-time * * * as appropriate'' (16 U.S.C. 1533(a)(3)(B)). The Service has determined that there currently are no likely benefits to be derived from additional critical habitat designations, and it therefore is not appropriate to designate additional critical habitat. Wolf populations in both the Eastern and Western DPSs are at their numerical recovery goals as a result of past and current protections, but the currently designated critical habitat played a negligible role in wolf recovery. This is attributable to the fact that gray wolves are habitat generalists, and their numbers and range are not limited by a lack of suitable habitat or by any degradation of any essential habitat features. Designating critical habitat would be an inappropriate use of our limited listing funds if done for a species that is successfully recovering without such designation, and at a time when we have determined that it is more appropriate to reduce, rather than increase, the Federal protections for the species.

It should also be noted that the Act (section 10(j)(2)(C)(ii)) prohibits us from designating critical habitat for the nonessential experimental populations established in the Western DPS and the Southwestern DPS. Furthermore, 50 CFR 424.12(h) prohibits the designation of critical habitat in foreign countries.

Issue 10: The Service should have conducted additional public meetings and hearings, or extended the comment period to provide additional opportunities to learn more about the proposal and to provide comments. We should have used the postmark date, rather than the received date, to determine whether comments were made during the open comment period.

Response: The Act requires that we provide at least a 60-day comment period and that we conduct one public hearing if we are requested to do so. We recognized that the proposal would be controversial, would require more explanation than most of our proposals, and would result in a large number of comments. Therefore, we went well beyond the basic requirements of the Act and other Federal rulemaking procedures. We established a comment period that was twice the required length. We prearranged 14 hearings from Maine to Washington State. We conducted two national press conferences and two Congressional briefings. We conducted multiple informational meetings. We provided a variety of informational materials at hearings and meetings, by mail and e-mail, and on our Web site. We established mechanisms for interested parties to ask questions and to submit comments verbally, in writing, by e-mail or fax, and on our Web site.

Finally, while the Service sometimes uses the postmark date to determine whether comments were received before a deadline in rulemakings, our normal practice is to use the date of receipt, and our intent to use that cutoff method at the close of the 4-month comment period was clearly stated in all our documents that referred to comment submission. We believe we provided extensive, varied, and sufficient opportunities for interested partied to ask questions, obtain additional information, and provide input for our consideration.

Issue 11: The Service should conduct Population Viability Analyses (PVA) before reclassifying anywhere.

Response: The Act requires that we use the best scientific data available when we make decisions to list, reclassify, or delist a species. The Service recognizes that PVAs are a tool that can provide some insight into the vulnerability of species, and we have conducted PVAs for a number of species, usually as an aid in establishing recovery goals or identifying the most critical gaps in our knowledge in order to prioritize research needs. While we have found PVAs to be useful in some circumstances, in other cases the analyses provided little or no new information, or the outcome was not considered to be reliable.

PVAs can be a valuable as a tool to help us understand the population dynamics of a rare species (White 2000). They can be useful in identifying gaps in our knowledge of the demographic parameters that are most important to a species' survival, but they cannot tell us how many individuals are necessary to

avoid extinction. The difficulty of applying PVA techniques to wolves has been discussed by Fritts and Carbyn (1995). Problems include our inability to provide accurate input information for the probability of occurrence of, and impact from, catastrophic events (such as a major disease outbreak or prey base collapse; we know of no catastrophic events that have significantly impacted large wolf populations except for human persecution), providing realistic inputs for the influences of environmental variation (such as annual fluctuations in winter severity and the resulting impacts on prey abundance and vulnerability), temporal variation, and individual heterogeneity, as well as dealing with the spatial aspects of extreme territoriality and the long-distance dispersals shown by wolves. Each of these factors can be a powerful determinant of the outcome of a gray wolf PVA, and relatively minor changes in any of these input values can result in vastly different outcomes.

PVAs are also useful for studying small populations. In a small-population study, the modeling exercise can provide clues to which demographic, genetic, or environmental parameters may have the greatest likelihood of influencing a species' survival, and thus possible insight into areas where initial conservation actions should be focused. However, for obviously recovering entities like the gray wolf populations of the Northern U.S. Rocky Mountains and the Midwest, PVA modeling exercises may largely be an exercise in quantifying the recovery of a species whose increases, and the reasons for them, are already qualitatively quite apparent. In the case of species like the gray wolf—a species that has been well studied and is well along the road to recovery—generally little is to be learned from a PVA.

The WI DNR conducted a PVA for the State's wolf population several years ago when its wolf population was considerably smaller than it is today. Most scenarios that were modeled by WI DNR (varying the probability of catastrophic events, reproductive rates, and environmental variability) resulted in very low probabilities of extinction even with the maximum wolf population limited to only 500 animals (WI DNR 1999a). The model treated the Wisconsin wolf population as a totally isolated population (that is, with no possibility of wolf immigration from Minnesota or Michigan), so even those low extinction probabilities were overestimates. Because this reclassification reduces Federal protection of wolves only slightly, a PVA would not be expected show any resultant significant change in the risk of extinction.

Finally, we note that none of the 11 peer reviewers of the proposal indicated that there was any need for the Service to conduct a PVA or minimum viable population analysis for the 2 gray wolf populations for which we proposed changes in July 2000. One reviewer stated that PVAs are of little value and may even be misleading.

Issue 12: The Service should prepare an Environmental Impact Statement for this rule.

Response: As stated in the proposal, the question of whether environmental assessments or environmental impact statements need to be prepared was addressed by our previous determination (48 FR 49244; October 25, 1983) in which we stated that such documents do not have to be prepared for regulations developed under section 4(a) of the Act.

Issue 13: A better notification process is needed for our public hearings.

Response: We did a great deal to alert interested parties to the details of public hearings. Public hearing times and locations were announced in the **Federal Register**, posted on our Web site, publicized in local and national press releases, and, in some areas of the Midwest, advertised on local radio stations. Notification letters were sent to numerous organizations so they could alert their memberships. In addition, parties who requested to be added to our wolf electronic mailing list received information on hearings and public meetings electronically. However, we acknowledge that, despite all these efforts, some interested parties did not learn of the hearings in time to attend. We are interested in receiving ideas to further improve our efforts to publicize our public hearings in the future. However, in this case there were numerous avenues, in addition to public hearings, for interested individuals to obtain information and submit comments on the proposal. All comments received during the comment period, whether presented at a public hearing or provided in another manner, received the same review and consideration.

Issue 14: The Service should consider how to delist nonessential experimental populations.

Response: For the gray wolf, the nonessential experimental populations in the Northern Rocky Mountains are part of a larger recovery program that also includes the northwestern Montana wolves. They will be delisted at whatever time the Western DPS is delisted.

Issue 15: One commenter stated that we cannot use wolves in experimental populations to count toward recovery or reclassification goals, because such populations can only be used for research purposes.

Response: The term ''experimental'' is used in the Act to describe these populations; however, this designation does not mean these populations may only be used for research purposes. Reintroductions of plants and animals are often experimental in the sense that they may use techniques that are newly developed, untested on that species or locality, or uncertain in success rate for other reasons. The authority to designate and establish experimental populations was added to the Act for the specific purpose of assisting the Service in establishing additional populations to further the recovery of the species. We have used this authority for many species to help achieve recovery goals by expanding occupied range. In the case of the two nonessential experimental populations (NEPs) in the northern U.S. Rockies, the final rule establishing those two NEPs indicated specifically that they were being established to help achieve the Western Plan's goals to establish viable wolf populations in central Idaho and the Greater Yellowstone Ecosystem.

C. Comments Regarding the Number of Distinct Population Segments and Recovery Programs Necessary for Gray Wolf Recovery

Issue: A large number of comments expressed the opinion that additional gray wolf DPSs should be established, and that the Service should initiate additional recovery programs in order to achieve gray wolf recovery as mandated by the Act. Additional DPSs and recovery programs were suggested for Nebraska, Kansas, Missouri, and Iowa; Virginia and Kentucky; the Carolinas, Georgia, and Tennessee; California and Nevada; Colorado, Utah, and the northern portions of New Mexico and Arizona; Oregon and Washington; the Pacific Coast; the Cascade Range; West Virginia; Missouri; Florida; and Utah. In addition, some respondents recommended that gray wolves should be reintroduced and recovered throughout their historical range or ''in all States.''

Response: These comments appear to reflect a misunderstanding of the purpose of the Act and confusion regarding the meaning of ''recover'' under the Act. The purpose of the Act is to provide for the conservation of endangered and threatened species. Conservation is defined as the use of all methods and procedures which are

necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. When a species no longer meets the definition of an endangered or threatened species under the Act, it is recovered, and we are to delist it.

The meaning given to ''recover'' in common conversational usage is ''to restore to a previous, or to the original, condition.'' However, incorrectly ascribing this common meaning to ''recover'' as used in the Act has led some individuals to mistakenly believe the Act functions as a biodiversity restoration program. The goal of the Act—preventing species extinctions—is much narrower that the rangewide wolf restoration and biodiversity restoration goals implicit in these comments.

We have evaluated, in light of the conservation biology principles discussed previously, our three continuing recovery programs for the gray wolf in the context of its previous listing across the 48 conterminous States and Mexico. We have concluded that sufficient redundancy and resiliency will be achieved by establishing three separate viable wolf populations or metapopulations in widely spaced areas of that geographic area. If each of these three populations contains enough reproducing packs so that it is a viable and self-sustaining population, its numerical size and geographic extent will provide the resilience needed for it to bounce back from newly developing or expanding adverse factors (*e.g.*, disease, massive wildfire, or the temporary decline of a prey species' population) in the foreseeable future. Furthermore, if these three populations are widely spaced and somewhat isolated from one another it is very unlikely that all three populations would simultaneously, or in rapid sequence, suffer from the same catastrophic event.

Once they are completed, the Service's three current gray wolf recovery programs will result in wolf populations of sufficient size and relative isolation to provide the necessary resiliency and redundancy. For example, the Northern Rocky Mountain gray wolf population—now at recovery levels—exceeded 560 animals at the end of 2001, and preliminary results from the end of 2002 indicate a population of approximately 660 wolves (Tom Meier, Service, *in litt.* 2003). The Midwestern gray wolf population—which has exceeded the numerical goals of the Eastern Gray Wolf Recovery Plan—is estimated to be over 3000 wolves. (Final recovery goals have not yet been established for the Southwestern (Mexican) gray wolf recovery program, but they will be designed to ensure long-term viability of that wolf population.) The currently occupied areas of the Eastern and Northern Rockies populations are separated by approximately 1000 kilometers (600 mi), and a similar distance currently separates the Greater Yellowstone Area wolf packs from the reintroduced wolves in the Southwest. Each of these gray wolf populations will be viable and self-sustaining when their recovery programs are completed, and the distances between them, while not providing total isolation, will provide a great deal of protection from multi-population catastrophic events.

Both the Northern Rocky Mountain and Eastern gray wolf recovery programs—when all recovery goals are achieved—will each cover sufficient geographic area and have enough wolves in a population or metapopulation structure to be sufficiently resilient to respond to adverse factors that may arise in the future. The Southwestern (Mexican) gray wolf recovery program, when a final recovery goal is established and attained, similarly will have sufficient distribution and number of wolves. Thus, the conservation biology principle of resiliency is satisfied by the achievement of the respective recovery goals of these 3 recovery programs.

Commenters suggested that additional gray wolf populations should be established in the western United States in order to maximize the species' long-term survival and minimize the likelihood of extinction. However, the Act does not mandate maximizing species survival, nor does it require undertaking widespread species restorations to minimize extinction risk. Rather, as discussed above, its mandate is to recover species to the point that they are ''not likely'' to become in danger of extinction in the foreseeable future. We believe the ''not likely'' standard will be exceeded by establishing three geographically widespread gray wolf populations that are independently viable, because it is highly unlikely that future threats will endanger multiple widely separated wolf populations. Thus, the conservation biology principle of redundancy is satisfied by our three current recovery programs.

The concept of representation, when applied to the conservation of the gray wolf, argues that we should preserve enough of its remaining genetic diversity so that future genetic problems are unlikely to lead to its extinction. These problems may include genetic drift, inbreeding depression, and diminished ability to survive as new environmental conditions develop. The three current gray wolf recovery programs are preserving all of what remains of the species' genetic diversity in the 48 States and Mexico. The current genetic diversity of the wolves in the western Great Lakes is a product of the remnant wolf population that survived in northeastern Minnesota, Canadian wolves from southwestern Ontario and Manitoba that moved into Minnesota, as well as southern Ontario wolves that moved into the eastern portion of Michigan's Upper Peninsula. The Northern Rockies wolf population is a mixture of southern Canadian wolves that repopulated the Glacier National Park area and wolves from Alberta and British Columbia, Canada that were brought into central Idaho and Yellowstone National Park. These two recovery programs are preserving all the remaining genetic material of the gray wolves that formerly inhabited those areas. Both the Midwestern and Northern Rockies wolf populations are believed to contain sufficient genetic diversity to survive over the long term, even if they were to become completely and permanently isolated from neighboring wolves across the Canadian border.

The reintroduced Southwestern (Mexican) gray wolf population originated from small captive populations composed of individuals captured in the wild in Mexico and identified in captive facilities in Mexico and the United States (Hedrick *et al.* 1997). Detailed records and careful selection of captive breeding pairs has ensured the conservation of this founding Mexican wolf genome. This recovery program is utilizing all the remaining genetic material that has been preserved from the wild Southwestern and Mexican wolf population, and when completed, it will ensure the long-term survival of that unique genetic diversity and maximize the ability of this isolated population to cope with, adapt to, and evolve in response to environmental change.

Thus, our three current wolf recovery programs are doing all that can be done to preserve the remaining genetic material from the gray wolves that previously occupied the 48 conterminous States and Mexico. Establishing additional populations would provide no additional genetic benefits to wolf recovery under the Act (with the possible exception of the Northeast; see below). Therefore, the conservation biology principle of representation is satisfied by these three gray wolf recovery programs.

Based upon the above points, the Act's mandate to recover the gray wolf will be satisfied by the restoration of three viable populations of the species, located in the Midwest, Northern U.S. Rockies, and Southwest. Therefore, in order to recover the gray wolf, the Service intends to continue focusing its gray wolf recovery activities in the current core areas (*i.e.*, Minnesota, Wisconsin, Upper Peninsula of Michigan, Idaho, Montana, Wyoming, New Mexico, and Arizona) of those recovery programs.

We do not intend to initiate new gray wolf recovery programs in any area—except possibly the Northeast, pending ongoing genetic and taxonomic studies and efforts to locate a listable and recoverable wolf population there—because new recovery programs are not necessary to achieve recovery of the gray wolf under the Act either as formerly listed in the 48 States and Mexico or under the new listings established by this final rule.

Once wolf recovery goals are achieved in any one of the DPSs, we will proceed to delist the entire DPS, even if some of the States within the DPS lack wild gray wolves. The presence or absence of gray wolves outside of core recovery areas is not likely to have a bearing on the long-term viability of the three wolf populations after their recovery goals have been achieved, and therefore such presence or absence will not be a factor in our consideration of delisting each DPS.

We have determined that the level of threats faced by wolf populations in the Eastern DPS and in the Western DPS warrant reclassification of each DPS to threatened. These threatened DPS listings, along with the three retained nonessential experimental population designations and the retained endangered listing for the Southwestern DPS, will continue to provide the Act's protections to all wild gray wolves. Furthermore, we believe that the delisting criteria for the Eastern DPS and the Western DPS can be achieved without establishment of additional populations within each DPS.

The Act gives us the authority to list by species, subspecies, or DPS. The DPS policy identifies the criteria that must be met in order for a vertebrate group to qualify as a DPS. In order for us to designate a DPS, a population must exist. Most of the States have no wolves or in the States that do have some wolves, those wolves are part of a metapopulation. However, our DPS policy does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria; Congress directed that we use our DPS authority sparingly. The Service has the discretion to list, reclassify, or delist at the subspecies, species, or DPS level, as we believe to be most appropriate to carry out our listing and recovery programs.

As described in the *Taxonomy of Gray Wolves in the Eastern United States* section above, there is a great deal of uncertainty regarding the identity of the large canid (or canids) that occurred historically in the Northeastern States. At the time our proposal was developed, we believed that the canid was likely a gray wolf, although we were uncertain as to its subspecific identity. However, subsequent molecular genetic and morphometric information has cast doubt on that interpretation of the evolutionary relationship of North American canids. Although far from certain at this time, increasing scientific evidence suggests that the historical large canid in the Northeastern States was more closely related to the red wolf than to the gray wolf. We will reevaluate our retained listing of the gray wolf in the Northeastern States at such time that we consider delisting Midwestern gray wolves, and at any time prior to that if significant new data become available.

D. Boundaries of Distinct Population Segments

Issue: We received comments expressing concerns with several aspects of the boundaries of the 4 proposed DPSs. Some commenters wanted the DPS boundaries to conform exactly with the geographic coverage of the existing gray wolf recovery plans, while other commenters wanted the boundaries expanded beyond those we proposed. Other commenters recommended that the boundaries be based solely on suitable wolf habitat and on physical barriers believed to subdivide that habitat. We also received comments suggesting that the boundary between the Southwestern and Western DPSs should be moved northward so that parts or all of Utah and Colorado are within the Southwestern DPS.

Comments that deal with the number of DPSs are addressed above in issue C, ''Comments Regarding the Number of Distinct Population Segments and Recovery Programs Necessary for Gray Wolf Recovery''; those dealing with delisting wolves outside of DPSs are addressed below in issue E, ''The Service Should Not Delist Outside of Distinct Population Segments''; and those dealing specifically with the boundaries of the proposed Northeastern DPS are covered below in issue S, ''Use of Scientific Data.'' For a detailed discussion of DPSs, refer to the *Distinct Population Segments Under Our Vertebrate Population Policy* section above. Also refer to the *Distinct Population Segments and Experimental Populations* section above for additional discussion of the purposes of these designations.

Response: A DPS is a listed entity that is usually described geographically rather than biologically. Nothing in the Act or in our Vertebrate Population Policy requires DPS boundaries to correspond to recovery plans, habitat characteristics, or physical barriers. DPS boundaries identify a geographic area that includes and surrounds a vertebrate biological grouping that has a separate listing under the Act. The DPS boundaries must contain the biological grouping and cannot subdivide it, but they do not have to precisely correspond with its present location, suitable habitat, or other features of the environment. In general, DPSs can be better understood, protected, recovered, and administered if their boundaries are placed beyond the area currently occupied by the biological grouping of concern, and even beyond the areas they are most likely to disperse into or colonize in the foreseeable future. Such boundary placement minimizes the potential confusion caused by individual wolves frequently crossing the boundaries and thereby changing their legal status and protection under the Act, and provides more consistent protection to dispersers that may ultimately return to their original core recovery area and contribute to recovery there.

While the Vertebrate Population Policy prohibits our use of boundaries between States to subdivide an existing biological population to establish ''discrete'' populations, it does not prohibit our use of boundaries between States or other cultural features as ''boundaries of convenience'' to identify the area within which the DPS's legal designation applies. By using boundaries between States (or other features such as major highways) that are located beyond the area currently occupied by wolf populations, we are able to clearly identify the geographic extent of the DPS listing (and thereby facilitate law enforcement and promote public understanding of the listing) while avoiding splitting the existing biological unit that we intend to recover.

Our proposed DPS boundaries were intended to serve two purposes. The first purpose was to include the core areas where the respective wolf population is recovering, as well as a substantial surrounding ''buffer area'' in which wolves dispersing from the core

areas were reasonably likely to occur in the foreseeable future. The second purpose was to remove Federal gray wolf protection in some areas of the 48 States where we believed restoration of wolves was unnecessary. Thus, our proposed DPS boundaries were designed to include the areas into which most, but not all, gray wolf dispersal was expected to occur. For example, most dispersing Midwest wolves have moved into the Dakotas, which were included in the proposed Western Great Lakes DPS. The Michigan Upper Peninsula wolf that recently dispersed to northern Missouri moved well outside of the proposed boundary for its DPS, but it is the only Midwestern wolf known to have moved beyond the proposed DPS boundary.

However, as discussed in issue E (below), we have now expanded the areas covered by these gray wolf listings. These new boundaries will provide continued protection under the Act to all gray wolves that disperse to any location within the species' historical range in the conterminous 48 States. A portion of the boundary between the Western DPS and the Southwestern DPS has been moved northward to a location approximately midway between the core recovery populations in the northern Rockies and the Southwest, in order to be consistent with existing gray wolf dispersal data. These final boundaries continue to serve our purpose of including the core recovery areas along with those areas into which wolves from the respective core areas are most likely to disperse. (Refer to the *Changes from the Proposed Rules* section below for additional discussion on DPS boundary changes.)

The expansion of the DPS boundaries does not mean that we intend to broaden our current gray wolf recovery programs to additional areas within the DPS boundaries or that we will initiate new wolf restoration programs. The expansion of these boundaries is being done solely because the Act requires that we maintain the gray wolf's listing in these areas until the species or the DPS is recovered. Recovery within a DPS can be achieved by reestablishing gray wolves in a portion of the DPS at a level and under circumstances that ensure that the population will not become in danger of extinction in the foreseeable future.

E. The Service Should Not Delist Outside of Distinct Population Segments

Issue: We received comments from many individuals and organizations regarding our proposal to remove the Act's protections for the gray wolf in all or parts of 30 States that were outside of the boundaries of the proposed DPSs. The commenters recommended that gray wolves should not be delisted in areas where they have not recovered and do not currently exist.

Response: Our proposed delisting outside of the proposed DPS boundaries was based on our belief that, because restoration of gray wolves in these areas is unnecessary, and because we have no plans to restore gray wolves in those areas, there was no reason to maintain the Act's protection for any gray wolves that might turn up there. We believed it was reasonable and appropriate to remove any unnecessary Federal regulatory burden, and any perception of such a burden, by removing the listing in those areas. Furthermore, we thought it would be desirable to eliminate any uncertainty in those areas regarding Federal protection for escaped or released captive gray wolves, wolf-dog hybrids, or feral dogs that are mistaken for wolves.

However, further analysis of the Act and implementing regulations has led to our conclusion that the Act does not provide for delisting a species in parts of its listed historical range because restoration of wolves in these areas is unnecessary, even if wolf recovery is proceeding successfully in other areas. Delisting can occur only when a species (or subspecies or DPS) is recovered, when it is extinct, or when the original data or analysis that led to the listing was in error (50 CFR 424.11(d)).

Therefore, we have modified those portions of our proposal that would have delisted the gray wolf in any part of its historical range. This was done by expanding the boundaries of the remaining gray wolf DPSs so they now include all States within the historical range of the gray wolf. This has the biological benefit of continuing Federal protection for all long-distance dispersers that remain within the species' historical range, thus providing them a greater probability of surviving and rejoining the core population in that area, or even joining the population in another gray wolf recovery area.

As discussed above in the *Historical Range of the Gray Wolf* section, we have now delisted the gray wolf in 14 States and in the eastern portions of Oklahoma and Texas. These southeastern and mid-Atlantic States are not included within the boundaries of any listed gray wolf DPS, because they are outside the generally recognized historical range of the gray wolf (Hall 1981). These States should not have been included when the gray wolf was listed at the species level in 1978. Due to their close approximation of Hall's historical range boundaries, we have used State boundaries and an interstate highway as the boundaries around this delisted area to facilitate law enforcement efforts and public understanding of the areas now included and excluded in the three gray wolf DPSs.

F. The Service Should Delist Gray Wolves in Additional Areas

Issue 1: A large number of comments recommended that we delist gray wolves in areas that we proposed for inclusion in one of the proposed DPSs, and thus would remain listed as threatened, endangered, or part of an experimental population and subject to the protective regulations that apply to it. The reasons for the delisting recommendations include: wolves are common elsewhere (in other areas of the 48 States or in Alaska and Canada) so they are not threatened or endangered; wolves have recovered (in that area or elsewhere) so they should be delisted; wolves are extirpated from the State; and a State can manage a resident species better than the Federal government.

Response: The Act mandates that we identify, list, and protect those species, subspecies, plant varieties, and distinct vertebrate population segments that are threatened or endangered, and that we maintain the listing and protection until the entity is recovered or goes extinct, or until we determine that the original listing was done in error. Unless and until one of these occurs, the entity must remain a threatened or endangered species. Full management authority cannot be returned to States or tribes until recovery has occurred or an erroneous listing is removed.

For vertebrate species, the Act, as implemented by way of our 1996 Vertebrate Population Policy, allows us to use international borders to limit the geographic scope of the threats evaluation that is done when we are considering a species for listing as threatened or endangered. This is appropriate, as it allows us to protect from extirpation within the United States those vertebrate species that might be more common elsewhere (*e.g.*, in Canada or Mexico). This approach has been successfully used for other species that are more common in Canada than in the United States, including the peregrine falcon, grizzly bear, and bald eagle, and we are witnessing similar success with the gray wolf.

In order to determine when a species is recovered, we must evaluate the current status of the species in comparison to recovery goals established for it in its recovery plan. We must also analyze the threats that

still face the species, as well as the threats that might increase or develop if the species is delisted. Five categories of threats are specified in the Act: loss or degradation of habitat or range; overutilization for commercial, scientific, or other purposes; disease or predation; inadequacy of regulatory mechanisms; and, any other natural or manmade factors. At the time we developed our proposal and conducted this analysis of threats, we could not affirm that recovery goals had been met and also conclude that probable future threats had been sufficiently reduced so that recovery could be declared and delisting initiated for any of our gray wolf recovery programs. Therefore, we proposed a reduction of Federal protections via a reclassification to threatened in some area, but did not propose the delisting of any gray wolf population. Because we have not proposed delisting of any gray wolf populations, at this time we cannot finalize a rulemaking that would include such a delisting. We must first propose such a change and provide an opportunity for public review and comment on it. Given the continued recovery progress of gray wolves in the West and western Great Lakes States, and State wolf management plan development work that has happened subsequent to our reclassification proposal (see issue U, ''State Wolf Management Plans''), we anticipate working on one or more gray wolf delisting proposals in the near future. However, we have determined that this reclassification action should be finalized first.

Since the gray wolf is not extinct in the United States, the species cannot be delisted for that reason.

The final reason that could justify a delisting-that the original listing was done in error-is discussed above in issue E, ''The Service Should Not Delist Outside of Distinct Population Segments'', and in the *Historical Range of the Gray Wolf* section. For this reason, we have delisted the gray wolf in all or parts of 16 States where the species should not have been listed originally because those areas are outside of the species' historical range.

Issue 2: Wolf management in the Western DPS needs to be transferred to the States.

Response: The Service agrees that a recovered wolf population is best managed by the respective States and tribes. The Service will propose to delist the Western DPS wolf population as soon as possible under the conditions specified by the Endangered Species Act. Two primary conditions have to be met for the western wolf population to be delisted. First the recovery goal of having a minimum of 30 breeding pairs of wolves distributed throughout Montana, Idaho, and Wyoming for a minimum of 3 successive years must be met. The Service is also required to make sure the factors that caused wolves to be listed are resolved. The one factor that applies most to wolves is that human-caused mortality be regulated so it does not cause wolf populations to become threatened or endangered again. The Service must be reasonably assured that adequate regulatory mechanisms are in place to conserve the wolf population so that it will not become threatened or endangered if the Act's protections are removed. The Service is working closely with the States of Montana, Idaho, and Wyoming as they develop wolf conservation plans that will meet this requirement. Upon confirmation in early 2003 that the wolf population has met the wolf population recovery goal for the Western DPS and if the States have finalized their wolf management plans (see issue U, ''State Wolf Management Plans''), the Service could propose to delist the gray wolf throughout the Western DPS in early 2003.

G. Threats From Humans Need Additional Consideration

Issue: A large number of commenters described the past persecution of wolves and expressed the belief that similar persecution will resume if the proposed rule is adopted.

Response: We recognize that human persecution of wolves is the primary reason for the decline of wolves across North America, and we analyze the nature and magnitude of this threat before and after this final rule in factor ''C. Disease or predation'' under the *Summary of Factors Affecting the Species* section. We believe the protections of the Act, in combination with extensive public education efforts by the Service and numerous private and public partner organizations, have reduced human persecution and led to the increase in gray wolf numbers and range. Therefore, in order for wolf population to remain recovered or nearing recovery, those prelisting levels of human-caused mortality must be avoided.

For two reasons, this final rule is not expected to increase the level of human persecution of gray wolves. First, the reclassification of wolves in 2 DPSs to threatened does not remove the protections of the Act, nor does it eliminate the Federal penalties for illegally killing one of these gray wolves. Second, by providing additional mechanisms for the control of problem wolves, including allowing certain landowner harassment/control actions in the Western DPS, we believe the incentive for illegally killing wolves will be significantly reduced. Thus, we do not believe this reclassification action will increase the threats from human-caused mortality; conversely, the action may result in decreasing those threats.

At such time as we propose delisting gray wolves, we will again assess the threats from human-caused mortality.

H. Other Threats Need To Be Assessed

Issue 1: The Service should consider the impacts of genetic risks on gray wolf recovery, because low genetic diversity can cause problems for a rare species.

Response: We agree that low genetic diversity is a concern for species with small populations or that have gone through a population bottleneck. However, Midwestern gray wolf populations currently are showing no signs of diminished genetic diversity. These wolves came from a remnant wolf population in northeastern Minnesota and Canadian wolves that have moved across the international border from western and eastern Ontario and Manitoba. At its lowest level, the Minnesota wolf population was probably 350 wolves or more, a level well above that expected to potentially cause genetic problems, especially because there is frequent interaction with adjacent Canadian wolf populations.

Similarly, the recovering northern U.S. Rocky Mountain wolves are derived from several Canadian sources, which increased the genetic diversity of their founding populations. They are not expected to have genetic problems. In contrast, Southwestern (Mexican) wolves have all come from 7 founders, but through managed breeding of these founders during the past 22 years, 86 percent of the founding genetic diversity has been preserved. Moreover, no signs of inbreeding depression have been detected (Kalinowski *et al.* 1999).

Issue 2: For the northern Rocky Mountain gray wolves, the Service should consider the impacts of wildfire, catastrophic events, human harassment, or genetic risks to gray wolf recovery.

Response: The Service evaluated a host of impacts as required by the Act, including habitat modification, human harassment and killing, and genetic risks. A recent study of genetic diversity of wolves in the northern Rocky Mountains indicated that the population was genetically diverse, in fact as much so as its source populations in Canada. None of these factors were thought to pose a significant risk to wolf

population viability in the foreseeable future; none would affect the reclassification of the gray wolf in the northern Rocky Mountains. With regard to wildfires, which humans often view as catastrophic events, large mobile species such as wolves and their ungulate prey usually are not adversely impacted. Wildfires generally lead to an increase in ungulate food supplies, leading to an increase in ungulate numbers, which supports increased wolf numbers in the area in the years following a wildfire.

I. Recovery Goals and Progress in the Western DPS

Issue 1: Commenters recommended that the Service abide by the strictest interpretation of the reclassification and recovery criteria found in the Northern Rocky Mountain Wolf Recovery Plan.

Response: We acknowledge that the proposed rule did not adequately explain how our goals for gray wolf reclassification and recovery in the northern Rocky Mountains have evolved since the 1987 Recovery Plan was written. A complete explanation can now be found in the subsection *Reclassification and Recovery Goals* within the section Recovery Progress of the Rocky Mountain Gray Wolf.

Issue 2: Several comments indicated that restoration of wolves in Montana, Idaho, and Wyoming does not warrant changing the classification of wolves throughout the much larger Western DPS from endangered to threatened.

Response: Wolf recovery in the northern Rocky Mountains of the United States has been defined as a minimum of 30 breeding pairs of wolves (a breeding pair is defined as a male and a female wolf that raise at least 2 young that survived until December 31) that are distributed throughout the mountainous portion of western Montana, Idaho, and northwestern Wyoming for a minimum of 3 successive years (see previous issue). A review of that definition by a wide diversity of professional peer reviewers indicated that such a population would be comprised of about 300 individuals and that some minimum level of connectivity among the U.S. subpopulations and with the larger wolf population in Canada was necessary to guarantee long-term persistence. That peer review indicated that population viability is a function of the population and not the area it occupies. The reviewers felt that geographically expanding an area that a population occupies had no impact on that population's viability. The Service believes that the Western DPS wolf population in the northern Rocky Mountains of Montana, Idaho, and Wyoming is not in danger of extinction, and therefore is no longer endangered but rather warrants reclassification to threatened status.

Issue 3: Address how reclassification of gray wolves in the Western DPS eliminates the threat of extinction.

Response: Reclassifying a species from endangered to threatened is not intended to eliminate the threat of extinction; instead, it is done in recognition that the species no longer warrants endangered status. Such is the case for gray wolves in the Western DPS. There currently are about 563 wolves in 34 breeding pairs in the Western DPS. Many of those breeding pairs are in extensive and secure habitats under public ownership, such as Yellowstone National Park and several National Forests. The gray wolf in the northwestern United States has achieved a population that is rapidly approaching our recovery goal. Reclassifying wolves in the Western DPS to threatened status still maintains the Service's management authority and the Act's protection for those wolves. The Act's protections will continue to prevent the excessive human-caused mortality that caused wolf extirpations in the past. When the States have adequate regulatory mechanisms in place, the Act's protections will no longer be needed. The reasons that wolves are no longer endangered are described in more detail in the 5-factor analysis that is part of this rulemaking.

J. Recovery in Northwestern Montana

Issue: The Service should not reclassify wolves in northwestern Montana, because recovery has proceeded slowly and may have stopped. Thus, full protection under an endangered classification should be maintained.

Response: The estimated wolf population in northwestern Montana is 84 wolves in 7 breeding pairs, which is the highest level recorded to date. The final regulations will not cause any significant increase in wolf mortality that would impact wolf population levels or prevent additional recovery there. We anticipate that the wolf population in northwestern Montana will enjoy the same benefits from more flexible management under this rule as have the rapidly expanding wolf populations in the nonessential experimental population areas. In addition, that management flexibility will extend to areas where the Service currently has no plans to actively promote wolf restoration under the Act, but where wolves may occasionally disperse and may cause conflicts. That flexibility should help increase local public tolerance of wolves.

Maintaining the connectivity of the wolf population in the northern Rocky Mountains of the United States with the much larger Canadian wolf population is important to the long-term viability of western United States wolves. However, at the current time, research indicates that wolves in all three general recovery areas of Montana, Idaho, and Wyoming are as genetically diverse as the source populations in Canada. Long-term genetic and demographic viability of wolves in the northern Rocky Mountains will depend on long-term management by the States and tribes and their strategies for maintaining population characteristics such as genetic diversity. That management could involve maintaining natural connectivity between United States and Canadian wolf populations or by active management such as relocation. With about 563 wolves in 34 breeding pairs distributed throughout Montana, Idaho, and Wyoming, the gray wolf in the northern Rocky Mountains—including northwestern Montana—is clearly no longer endangered with extinction. The 4(d) rule is very similar to the nonessential experimental population rule, under which rule wolf populations in Idaho and Wyoming have flourished. The Service believes the increased management flexibility under threatened status and a 4(d) rule is appropriate and the increased management flexibility will assist in completing the species recovery.

K. Special Regulations Under Section 4(d) for the Western DPS

Issue 1: The Service should not encourage harassment of wolves in the Western DPS.

Response: The Western DPS 4(d) rule allows landowners and permittees on Federal grazing allotments to harass wolves in a noninjurious manner at any time. This type of harassment will not affect the wolf population other than by making some individual wolves more wary of people. Wolves are adept social learners. Harassing wolves that have begun to be comfortable around people will cause those wolves to become more wary. Wolves that are wary of people and places that are frequented by people may be less likely to be involved in livestock and pet depredations. Wolves that are not wary of people are more vulnerable to being illegally killed or being hit by cars and, in rare and the most extreme circumstances, wolves can become habituated to human foods and can become a potential threat to human safety.

In some situations the 4(d) rule also allows the injurious harassment (for example, by rubber bullets) of wolves under a permit from us. This type of harassment will permit management of situations (for example, loitering around vulnerable livestock, approaching humans, trying to attack pets) before they have escalated into a situation that calls for more drastic measures such as lethal control. To prevent abuse, this type of activity would be limited by case-by-case evaluation and controlled by a permit. In the experimental population areas, this type of management has been used in a few situations, and no wolves have been permanently injured.

Issue 2: The Service should only allow translocation (that is, livetrapping and releasing at a distant location) to control problem wolves.

Response: Translocation of wolves to reduce wolf-livestock conflicts can be a valuable management tool when wolf populations are low and empty habitat is available for translocated wolves. Wolves are territorial, and resident packs will kill wolves that are translocated to their territory. With the wolf population near recovery levels, few places are available to translocate wolves. It also appears that translocation of problem wolves is often not successful at preventing further problems, because the wolf has learned that livestock can be prey and carries that learned behavior to its new location and becomes a problem wolf there. Some wolves have traveled great distances after translocation and have returned to the area where they were captured. The Service primarily will rely on lethal control for management of wolves that attack livestock, because most habitat in Montana, Idaho, and Wyoming that does not have livestock is already occupied by resident wolf packs. However, translocation may continue to be used to resolve pet dog depredations and excessive depredation of native wild ungulate populations.

Issue 3: The Service should allow a limited wolf hunting season in Montana.

Response: Hunting is a valuable, efficient, and cost effective tool to manage wildlife populations. The Service has recommended that State wolf management programs in the West have regulated public hunting as part of their policy to conserve the wolf population. Conservation programs to restore large predators such as mountain lions and wolves are succeeding because of the historic restoration of wild ungulates, such as elk and deer, by State fish and game agencies and sportsmen. However, allowing public hunting of wolves while they are listed under the Act is unlikely. (A Service-proposed public trapping season for threatened Minnesota wolves in areas of high wolf depredation was prohibited by a Federal court in the mid-1980s.) Upon confirmation in early 2003 that the wolf population in Montana, Idaho, and Wyoming has met the recovery goal and when State wolf management plans are completed (see issue U, ''State Wolf Management Plans''), the Service will move as quickly as possible to delist the wolf population. Following delisting, State-managed wolf hunting could be allowed by States if it is carefully managed and closely monitored.

Issue 4: The Service should relocate livestock if conflicts occur on public grazing allotments.

Response: Wolves and livestock, primarily cattle and horses, can live near one another for extended periods of time without significant conflict. Most wolves do not learn that livestock can be successfully attacked and do not view them as prey. However, when individual wolves learn to attack livestock, that behavior can quickly be learned by other wolves if it is not stopped. Since large portions of wild ungulates winter on private property, even wolves that prey on wild ungulates will be in close proximity to livestock during at least some portion of the year. Wolf recovery can occur without disruption of traditional western land-use practices and has successfully occurred without moving livestock off of public grazing allotments. Public lands can have both large predators and seasonal livestock grazing.

Furthermore, the Service does not have the authority to relocate livestock on either public or private land, except on lands within the National Wildlife Refuge System. Regulating or prohibiting livestock grazing on public lands is under the discretion of the respective land management agency.

Issue 5: The Service should emphasize nonlethal wolf control to resolve conflicts.

Response: We will continue to use nonlethal forms of wolf management, such as wolf harassment by landowners, injurious but nonlethal harassment by permitted individuals, use of scaring devices, working with conservation groups to provide fencing, alternative pasture, and guard animals and extra herders, and providing information on livestock management practices that can reduce conflicts with wolves. However, these methods are only effective in some circumstances, and no one tool is a cure for every problem. Wolf populations are at recovery levels, and wolf conflicts will increase as the population continues to grow. Most habitats in Montana, Idaho, and Wyoming, where conflicts between people and wolves are unlikely, are now occupied by wolves. The Service will rely on a variety of management tools including nonlethal approaches, but lethal control will often be used to resolve conflicts with livestock. Wolf populations can remain stable while withstanding 25–35 percent human-caused mortality per year. Agency lethal control of problem wolves was predicted to remove about 10 percent of the wolf population annually, and at that level it will not reduce the wolf population, but will minimize conflicts with livestock.

Issue 6: The special rule under section 4(d) should not exempt Federal agencies from the section 7 consultation requirements of the Act.

Response: The proposed rule does not exempt Federal agencies from their consultation requirements under the Act for threatened species. Federal agency consultation with the Service on their actions that may affect gray wolves is required, but under the special rule, it will not result in land-use restrictions unless these restrictions are needed to avoid take at active den sites between April 1 and June 30. Wolves are very adaptable, and Federal activities—unless they directly kill wolves—will have no significant effect on them. To date there have been virtually no land-use restrictions imposed for the benefit of wolves, and the wolf population has recovered quickly.

Issue 7: The Service should not loosen restrictions on lethal take; and we should base the take levels on scientific information.

Response: Wolf management, including the nearly identical forms of lethal wolf control included in the 4(d) rule, have been employed in the nonessential experimental population areas since 1995. The wolf population in those areas has rapidly expanded, and very few wolves have been taken under those provisions. Lethal take by agency personnel and lethal take under permits issued to the public are designed to target problem wolves and reduce the level of conflict with local rural residents. This level of take is unlikely to affect wolf population recovery and is based upon the biology of wolf populations. We have scientific data that show that such take is not excessive and allows the continuing growth of wolf populations.

Issue 8: The Service should allow wolves to be lethally taken for depredations on public land.

Response: The 4(d) rule allows wolves to be killed on public grazing allotments. Livestock producers can

receive a permit from us to shoot a wolf that is physically attacking livestock or guard and herding animals after we have confirmed that a wolf depredation has previously occurred. Comments on the environmental impact statement on wolf reintroduction, the experimental population designation process, and the proposal for this final 4(d) rule indicated that commenters believed that wolf management on public lands should be more closely controlled (that is, more protective of wolves) than on private land. To address this public concern and the legal responsibilities of Federal land management agencies to conserve listed species and provide a balance between the needs of wildlife and other uses, the 4(d) rule distinguishes between wolf management practices on Federal lands versus those on private land, while also addressing chronic wolf depredation. Under otherwise similar circumstances, the 4(d) rule will allow livestock producers to kill a gray wolf that is attacking their livestock on their private land without a Federal permit.

Issue 9: Commenters stated that the Service should deny a take permit to livestock producers who experience wolf depredation after improper disposal of livestock carcasses. Other commenters recommended that the Service redefine ''problem wolf'' to exclude those involved with acts of human carelessness or negligence.

Response: The Western DPS 4(d) rule states that wolves that attack livestock after being attracted to an area by artificial or intentional feeding, including livestock carcasses, may not be identified as problem wolves and may not be controlled, either by agencies or by permits to individuals. However, it would take an unusual situation to warrant withholding Service-authorized control of wolves that attacked livestock (that is, outside of the scope of traditional livestock management practices). In many instances, particularly in remote public land grazing allotments, it is nearly impossible to dispose of livestock carcasses. Wolves are very effective scavengers and will feed on livestock carcasses they discover. The fact that wolves feed on livestock carcasses does not mean that they will begin to depredate on livestock. Many biologists believe that the more familiar wolves become with livestock, even by feeding on carcasses, the greater the odds are that one could try to attack livestock. However, the bigger risk factor is that livestock carcasses may attract wolves to an areas near livestock which could increase the encounter rate and potential for depredation. The occasional discovery of a livestock carcass that would occur through traditional Western rangeland animal husbandry practices is unlikely to significantly increase the risk of wolf depredation on livestock. The Service does advise livestock producers of the potential for conflict that could occur when wolves are attracted to areas with livestock and, where possible, that livestock carcasses should be rendered or buried. The Service may determine not to control wolves until the attractants are removed.

Issue 10: The Service should increase the issuance of take permits on private, State, and Federal public lands.

Response: For the purposes of the Western DPS 4(d) rule, the Service considers State grazing leases to be treated the same as private property, unless a State management plan approved by the Service specifies otherwise (see issue U, ''State Wolf Management Plans''). For instance, a permittee on a State livestock grazing allotment could shoot a wolf in the act of physically attacking livestock without a permit from the Service, just as he or she could do on private land. The 4(d) rule allows wolves to be noninjuriously harassed without a permit, injuriously harassed under permit, and killed in the act of attacking livestock or herding and guarding animals. In chronic problem situations, wolves can be shot on sight under permit. Furthermore, Federal, State, and tribal agencies can harass, move, and/or kill wolves to reduce conflicts with livestock, other domestic animals, and pets, and even big game populations. The Service does not plan to implement even more liberal practices for dealing with problem wolves at this time. More liberal management—for example, management through regulations allowing defense of property and public hunting—might be a part of State-run wolf conservation programs once the wolf population is delisted.

Issue 11: The Service should provide clear guidelines to residents regarding their rights under the 4(d) rule.

Response: The Service will do many public information announcements on the 4(d) rule. After the experimental population rule was completed, the Service prepared a summary of the special rule and distributed it to local landowners, livestock organizations, and the media to clarify what kinds of activities were allowed. We will do the same for this special regulation. In addition, the Service routinely conducts presentations and interacts with the public to clarify its regulations.

Issue 12: We should allow States and tribes outside a gray wolf recovery area to relocate wolves that are impacting ungulate populations.

Response: The 4(d) rule does allow any State and tribe to define an unacceptable impact resulting from wolf depredation in its State and tribal wolf plan and relocate wolves that are causing that impact. If 10 or more breeding pairs are in a State, the Service, in cooperation with the State or tribe, may decide to move wolves that are impacting State ungulate populations, even if the State or tribe does not have an approved wolf plan.

Issue 13: The Service should drop the provision to translocate western wolves if they are causing ''unacceptable impacts'' to wild ungulate populations. There is no evidence that Rocky Mountain wolves pose any significant threat to the ungulate populations in the region.

Response: In some situations, wolf predation, in combination with other factors, can contribute to dramatic localized declines in wild ungulate populations. Segments of the public and State fish and game agencies are very concerned that if these unusual conditions exist and wolf predation is contributing to dramatic declines in a localized ungulate population, then management of wolf predation, in addition to management of other factors, must be an available option. Moving wolves to resolve these types of situations can assist in ungulate management and ease local public and State game managers' fears about excessive unchecked wolf predation on native big game populations and hunter harvest.

Issue 14: The Service should define ''abnormal'' as it is used in the Western DPS 4(d) rule to allow taking of wild wolf-like canids that may be detrimental to gray wolf recovery.

Response: The 4(d) rule allows the Service or designated agencies to take any wolf or wolf-like wild canid that the Service determines has abnormal physical or behavioral characteristics. The primary purpose of these provision is to allow for the removal of free-ranging privately owned captive wolves or wolf-dog hybrids. There are a wide variety of traits that could be considered abnormal by the Service and each situation will be addressed on a case-by-case basis. However, physical examples of abnormal would be wolf-like canids that have spotted pelt patterns or highly curled tails or otherwise appear to have dog-like traits. Behavioral abnormalities would include a high affinity to humans or human dwellings, aggressive behavior toward humans, or displaying prolonged courtship or breeding behaviors with domestic dogs.

Issue 15: Provide expanded definitions of ''wolf conflicts,'' ''wolf problems,'' ''persistent activity,'' and other related terms.

Response: Terms such as these necessarily need case-by-case application and situational definitions. A wolf pack living in an area and occasionally moving through livestock is routine and generally would not be considered to be a conflict or problem. However, a pack that also ''tests'' or runs livestock has crossed the line into a different category that may involve ''wolf conflicts'' and a need for some type of aversive conditioning. A wolf closely associated with a particular ranch for a short period of time may raise no specific concerns, whereas the same situation in proximity to a residential subdivision would. The Service believes that, because management flexibility will be required, wolf behavior can vary with individuals, and the number of situational variables is limitless, more-specific definitions of these terms are not necessary and would be unreasonably confining.

Issue 16: The Service should adhere to the Control Plan when targeting problem wolves.

Response: The Western DPS 4(d) rule now provides the regulatory framework under which problem wolves will be managed. The 1988 and 1999 Interim Wolf Control Plans have been replaced by the 4(d) rule.

Issue 17: Clarify the criteria that constitute opportunistic harassment.

Response: The definition of opportunistic harassment is provided in the Definitions section of the Western DPS 4(d) rule.

Issue 18: Clarify how wolf take rules apply to private land.

Response: The 4(d) rule has been slightly modified and does clearly State how wolves may be taken on private land. In addition, the comparison chart has been revised to clarify provisions of the Western DPS 4(d) rule as they apply to private and public land.

Issue 19: The Service should require verification of wolf depredation before allowing private control.

Response: The Western DPS 4(d) rule requires agency confirmation of wolf depredation before agency control or lethal take permits can be issued. The taking of a wolf that is physically attacking livestock on private land is allowed without a permit, but such take must be reported within 24 hours and evidence of a depredation (such as wounded livestock) must be present. We believe that these stipulations prevent abuse and focus control on specific problem wolves.

Issue 20: The Service should encourage ranchers to take measures to reduce the risk of wolf depredation.

Response: The Service works with USDA/APHIS-Wildlife Services, livestock organizations, and private groups to identify and publicize ways that livestock producers can reduce the risk of wolf depredation. In the past the Service and its cooperators have developed a host of tools that may help livestock producers prevent wolf-caused losses. The decision to utilize any of the tools offered is strictly voluntary on the part of the livestock producer, but in the past most of them have been very willing to voluntarily take steps to attempt to reduce the risk of wolf predation.

Issue 21: The Service should allow for the intentional harassment of gray wolves depredating on livestock.

Response: The Western DPS 4(d) rule allows all wolves on private land and those near livestock on public grazing allotments to be harassed at any time for any reason in a noninjurious manner. A permit to injuriously harass wolves can be issued on private and public lands. Wolves on private land that are actually seen depredating on livestock can be killed on private land without a permit, and on Federal grazing allotments a permit can be issued after a depredation has been confirmed.

Issue 22: The Service should allow landowners with inholdings within Federal lands to take wolves prior to suspicious activity or depredation.

Response: Wolves are very susceptible to human-caused mortality and were exterminated by excessive human persecution. Wolf populations could not persist in the face of unregulated human-caused mortality. Allowing any wolf seen to be shot on sight could significantly reduce wolf populations and jeopardize recovery. The States do not allow other large predators or wild ungulates that are much more common to be shot on sight for the same reason. Most large wildlife species, because of their relatively low reproductive rates and naturally high survival rates, will disappear in the face of unregulated human-caused mortality. A wolf that is simply on private property is not normally a problem animal, but wolves that attack livestock are aggressively controlled.

Issue 23: The Service should allow the intentional harassment of wolves on public lands.

Response: The Western DPS 4(d) rule allows any wolves near livestock to be harassed in a non-injurious manner on public lands.

Issue 24: The incidental take language in the proposed rule may undermine support by traditional wildlife users in Oregon, because it is dissimilar to the current rules for the nonessential experimental populations.

Response: The final special regulation for the Western DPS is intended to have similar incidental take provisions as those that have applied to the nonessential experimental populations, as specified in 50 CFR 17.84(i)(3)(viii). This is a change from the provisions of the previous endangered status, under which no incidental take of wolves was allowed outside of the nonessential experimental area.

Mistakenly shooting a wolf will not be classified as incidental take under the new special regulation; similarly, such an action has not been considered permissible as incidental take under the existing regulations for the nonessential experimental populations. One of the basic rules of hunter and gun safety is to be sure of your target. Just as is the case in current law in most States, a hunter who shoots a protected animal through mistaken identity is liable for that action. Both the new special regulation for the threatened Western DPS wolves and the existing regulation for the nonessential experimental populations stress the need for shooters to exercise reasonable due care to identify their target and avoid taking a gray wolf.

Issue 25: Under the permitting provisions of section 10(a)(1)(A) of the Act, the Service already has all the management flexibility it needs to deal with problem wolves in northwest Montana, so there is no need to reclassify those wolves to threatened and create a special regulation. The Service has not identified any additional flexibility that these changes would provide.

Response: We agree that the Service does have discretion to issue permits to manage wolves under the Act's 10(a)(1)(A) authority. However, that authority is not as broad or flexible as the provisions of this special 4(d) rule. The Service believes that the 4(d) rule clarifies the Service's intent and in some cases provides for the Service to allow management actions without the sometimes cumbersome process of issuing individual permits.

L. Nonessential Experimental Population Designations

Issue 1: Several respondents commented that the Service should review, delete, add to, and/or modify the NEP designations in central Idaho and the greater Yellowstone area. One peer reviewer recommended the NEP designations be removed, because they

are ''no longer appropriate and create an overly complex regulatory structure.''

Response: One of the alternatives considered in the draft proposal, but not selected for further analysis in that proposal, was removing the NEP designation in the central Idaho and Yellowstone areas, making all the Western DPS threatened, and managing all wolves in the Western DPS under this 4(d) rule. We chose to leave the NEP designations as they are, because in the 1994 rulemaking for the NEPs we stated we did not envision changing them until recovery occurred. In addition, several Federal agencies expressed concern over the potential of having to do section 7 consultation again, and the NEP rules are working well and are understood by most local residents in those areas. Instead, we have tried to make this 4(d) rule very similar to the special rule for the NEPs, thereby standardizing proven successful wolf management strategies throughout the Western DPS. While the NEP rules and this 4(d) rule are separate regulations, they are nearly identical, and they both address most public and agency concerns.

Issue 2: The Service should maintain NEP status for wolves that stray beyond NEP borders.

Response: Both the DPS and NEP designations are geographically based. Except for those wolves that are in captivity, gray wolves are listed and protected according to where they are located. However, the regulations for the three existing gray wolf NEPs do allow the Service to capture and return wolves known to be from the NEP areas if they move beyond the NEP boundaries. Thus, wolves that stray out of an NEP area can be moved back into the NEP area to further contribute to that recovery program.

Broadly applying all of the provisions of the NEP regulations to wolves that disperse and remain outside the NEPs would be equivalent to expanding the boundaries of the NEP. In our regulations establishing the Rocky Mountain gray wolf NEPs we stated we did not envision changing them until those wolf populations were delisted. We will not make such changes at this time in the absence of biological need and strong public support for such a change. Evidence of such need or support was not forthcoming during the comment period, even though we specifically requested comments on the two northern Rocky Mountain NEP regulations.

However, this final 4(d) rule applies provisions similar to those of the two Rocky Mountain NEPs to wolves outside of the NEPs. Thus, many of the provisions of the two Rocky Mountain NEPs will now be applied to wolves in the larger Western DPS.

M. Lethal Control of Gray Wolves

Issue 1: We received a number of comments that expressed varying degrees of opposition to the lethal control of gray wolves. Some commenters asked that we prohibit any form of lethal taking of wolves. Other comments supported killing of wolves only in defense of human life. Other viewpoints supported lethal control only if it is carried out by designated government agents, while some commenters feel that lethal control should not occur on public lands. The lethal control of wolves that kill only pets was opposed by some commenters.

Response: Current regulations under the Act that apply to both endangered and threatened species (50 CFR 17.21(a)(c)(2), § 17.21(a)(c)(3), § 17.31(a), and § 17.31(b)) provide the authority to lethally take endangered and threatened wildlife under several different scenarios. Furthermore, section 4(d) of the Act allows the promulgation of special regulations for threatened species if we determine that those regulations are ''necessary and advisable to provide for the conservation of such species.'' These special regulations can include provisions for lethal taking of the species, if appropriate. In the case of experimental populations, special regulations can also be promulgated allowing lethal control. The common feature across these various regulations is that lethal take is allowed if it is necessary to protect human life and safety or is necessary for the conservation of the species.

The Service has had gray wolf regulations that allow lethal take under various scenarios in different parts of the country. Those regulations were necessary for wolf conservation, and they were tailored to meet the needs of the differing situations in their respective areas. In all cases they have two purposes: reducing threats, and the perceptions of those threats, to human safety; and reducing conflicts between wolves and humans in order to lessen the likelihood that individuals would act on their own to reduce perceived conflicts, likely leading to the deaths of more wolves than would result from regulated lethal control actions.

We believe the special regulations that have been used in Minnesota to control wolves depredating on livestock and other domestic animals have reduced wolf-human conflicts, have diminished the illegal killing of wolves, and thus have aided the continuing recovery of gray wolves in that State. The special regulations for Minnesota wolves provide for lethal control by designated government agents when wolf depredation has been verified and is likely to reoccur. These restrictions result in the control, including killing or permanent captivity, of those wolves that are taking domestic animals, but provide protection for wolves that are members of packs that hunt only wild prey. These regulations are biologically sound, and we believe they are consistent with wolf recovery in Minnesota. We have no information that would lead us to suspect that the similar regulations finalized in this rule will interfere with continued wolf recovery in Wisconsin and Michigan.

We are not making any changes to the current lethal control regulations for Minnesota gray wolves. We are allowing similar depredation control activities in most other States in the Eastern DPS, and providing the authority for tribes to salvage wolf parts for spiritual and cultural use and to conduct depredation control actions on reservation land without a Federal endangered/threatened species permit.

We have developed the two special regulations to provide the actions necessary to reduce human conflicts in the Western and Eastern DPSs. Each special regulation is designed to address the unique needs within the respective DPS, and to minimize adverse impacts on wolf recovery. Lethal depredation control is being authorized only to the extent that we believe is necessary to continue the recovery of the wolf populations to meet our recovery goals within those two DPSs.

We are providing lethal depredation control authority to most of the States and tribes within the Eastern DPS, including those States outside of the core recovery States of Minnesota, Wisconsin, and Michigan. (This authority is not being provided to States and tribes east of Ohio). It will be the decision of the respective tribes and States as to whether they want to utilize this authority to kill depredating threatened wolves in those rare incidents of verified depredation in those noncore areas.

In the Western DPS the 4(d) rule allows wolves that have been involved in livestock depredations to be killed by agencies and the public. This take will be highly regulated and is not expected to significantly impact the wolf population. To date about 6 percent of the wolf population in Montana, Idaho, and Wyoming is affected by Service wolf control actions, including lethal control under the continuing authority of the nonessential experimental population regulations. This level of

human-caused mortality will not keep the northern Rocky Mountains wolf population from continuing its rapid expansion. As the wolf population has expanded rapidly, fewer areas of remote habitat remain for wolves to be moved to. Therefore, to resolve livestock depredations, the Service will be lethally controlling wolves in most situations.

Issue 2: A number of comments stressed that we should emphasize nonlethal depredation control measures and increase research efforts aimed at improved nonlethal control measures.

Response: The Service will continue to cooperate with USDA/APHIS-Wildlife Services, State DNRs, universities, and special interest groups to investigate ways to reduce the level of conflict between people, livestock, and wolves. To date we and our partners in wolf recovery have investigated and implemented the use of fencing; guard animals; extra herders; light, siren, and other scare devices, including those activated by wolf radio-collars; shock aversion conditioning; flagging; less-than-lethal munitions; offensive and repelling scents; supplemental feeding; harassing wolves at dens and rendezvous sites to move the center of wolf pack activity away from livestock; trapping and moving individual pack members or the entire pack; moving livestock and providing alternative pasture; investigating the characteristics of livestock operations that experience higher depredation rates; and research into the type of livestock and rate of livestock loss that are confirmed in remote public grazing allotments. We also correspond with and maintain professional contact with researchers and wildlife managers throughout the world to discuss and learn how they are dealing with similar problems. As a result of these attempts at nonlethal methods, we have not yet discovered a reliable method of nonlethal control. It is apparent that lethal control will remain an important tool for managing wolves that learn to depredate on livestock.

Lethal depredation control in the Western DPS is further discussed under section K. *Special Regulations under Section 4(d) for the Western DPS,* above.

N. Comments Regarding the Eastern DPS (composed of the proposed Western Great Lakes DPS and the proposed Northeastern DPS, as well as additional States)

Most comments regarding the Eastern DPS expressed opposition to delisting Midwestern wolves, addressed the proposed special regulation for the proposed Western Great Lakes DPS, or dealt with the proposed Northeastern DPS. Comments in the latter two categories are addressed in separate sections O and R, below. Other comments regarding the Eastern DPS follow:

Issue 1: Numerous comments expressed opposition to reclassifying Midwestern wolves to threatened status.

Response: Since our proposal was developed, we have received 2 additional years of data showing that wolf numbers in the Midwest are continuing to expand. We have reviewed, and have included in this rule, that additional population data, as well as updated information regarding disease occurrence and human-caused mortality. The additional information supports the reclassification from endangered to threatened.

Issue 2: The Service should support monitoring of gray wolves in the Midwest, and should improve wolf monitoring in the Lower Peninsula of Michigan.

Response: We have been partially funding wolf monitoring and research efforts by the Michigan and Wisconsin DNRs for many years. This support is expected to continue as long as the gray wolf is protected under the Act, and may continue to some extent for 5 years post-delisting.

Currently, we are not aware of any wild gray wolves in the Lower Peninsula of Michigan. While we understand the interest in identifying and protecting gray wolves that might occur in the Lower Peninsula, those wolves would be unnecessary to accomplishing gray wolf recovery under the Act. While we would provide technical assistance to initiate wolf monitoring and conservation in the Lower Peninsula if requested by the State and interested tribes, it is unlikely that we will be able to provide funding for wolf monitoring in the Lower Peninsula.

Issue 3: We should consider the potential impacts of hybridization with coyotes in the Midwest.

Response: We are concerned about gray wolf-coyote hybridization. There is mitochondrial DNA evidence that such hybridization may have occurred in the past (Lehman *et al.* 1991), but the nature of mitochondrial DNA provides little information on when, and how frequently, wolf-coyote hybridization may have occurred. There currently is no evidence that hybrid events have significantly changed the wolves in the Midwest. Morphologically, behaviorally, and ecologically they continue to look, act, and function as wolves, rather than like hybrids.

Issue 4: The Service should delist gray wolves in the Midwest.

Response: We recognize that wolf numbers in Minnesota, Wisconsin, and Michigan have surpassed the numerical goals of the Eastern Timber Wolf Recovery Plan. However, at the time our proposal was being prepared, we lacked reliable information on future wolf management in Minnesota, and we were therefore unable to evaluate the threats that might impact Minnesota wolves if they were delisted. See the Summary of Factors Affecting the Species section below under factor D., *The adequacy or inadequacy of existing regulatory mechanisms,* for additional discussion of Eastern DPS gray wolves.

The subsequent completion of the 2001 Minnesota Wolf Management Plan gives us the ability to better evaluate the extent of the threats that would likely be experienced by Minnesota gray wolves if they were delisted (see issue U, ''State Wolf Management Plans''). Therefore, now that we have completed this rulemaking, we intend to reevaluate the threats to wolves in the Midwest, in light of current data and expected future wolf management by the States and tribes, in order to determine if the Eastern DPS constitutes a recovered entity. If we conclude that recovery under the Act has occurred, we will promptly publish a delisting proposal and open a public comment period. As we develop the proposal and take final action, we will again evaluate information on gray wolf presence in the northeastern United States.

O. Special Regulations Under 4(d) for Parts of the Eastern DPS (formerly the Western Great Lakes and Northeastern DPSs)

Issue 1: The government should not be involved in control of depredating wolves in Minnesota, Wisconsin, and Michigan. It should be the farmers' responsibility to keep their livestock out of the reach of wolves.

Response: Assisting farmers in reducing the adverse impacts of wildlife on agricultural activities has long been a program of the Federal Government, and currently is accomplished by the Wildlife Services program of the U.S. Department of Agriculture. In addition, the Service has a policy that directs us to minimize the adverse economic effects of our endangered and threatened species recovery programs. Thus, reducing wolf depredation on livestock by removing the offending wolves and wolf packs is an appropriate part of our wolf recovery programs, as long as those activities are consistent with gray wolf recovery. We believe that

controlling depredating wolves is consistent with wolf recovery.

Issue 2: Lethal control of depredating wolves on public lands should not be permitted.

Response: Trapping for depredating wolves on public land generally has not been done under the ongoing wolf depredation control program in Minnesota, and we do not expect such trapping to be commonly carried out in either Wisconsin or Michigan under the new special regulation (50 CFR 17.40(o)). Such trapping is restricted to within 1 mile of the depredation site, and the trapping usually can be effectively carried out on private lands. In addition, most Federal lands (National Parks, Lakeshores, and Riverways, and National Forests) in these States will not allow wolf trapping on their lands. However, the special regulation will allow wolf trapping on State, tribal, county, or other publicly owned lands. We believe that if wolf depredation has been verified, it is in the best interests of wolf recovery to remove the problem wolves in the most effective manner, so we will not put unnecessary restrictions on the trapping locations.

Issue 3: The Service should require evidence of conflict between livestock and wolves prior to initiating control measures.

Response: We agree with this comment. The special regulation (both as proposed and as finalized) requires a determination that ''the depredation was likely to have been caused by a gray wolf'' and that ''depredation at the site is likely to continue'' if the problem wolves are not removed.

Issue 4: The special regulation should allow depredation control measures for wolf depredation of game farm animals.

Response: The special regulation allows depredation control measures to be carried out in response to wolf depredations on ''lawfully present livestock or domestic animals.'' The regulation does not specifically address game farm animals. However, if State or tribal wolf management plans (see issue U, ''State Wolf Management Plans'') define livestock to include game farm animals, our special regulation can be invoked in game farm depredation incidents. We expect such depredation control actions to occur in Wisconsin, because the Wisconsin Wolf Management Plan defines livestock to include ''pen-raised animals raised on licensed game farm operations'' (WI DNR 1999a).

Issue 5: We received a number of comments espousing various opinions on who should be allowed to conduct depredation control activities under the proposed special regulation that now applies to all midwestern States except for Minnesota. Opinions ranged from allowing private individuals, including farmers and animal owners, to take problem wolves, to allowing only qualified government agents to kill such wolves.

Response: We believe the depredation control program, as operated in Minnesota since the mid-1980s, has been highly successful in removing depredating wolves and thus greatly reducing domestic animal losses, while not unnecessarily impacting the continued growth of the Minnesota wolf population. Those regulations allow employees or designated agents of the Service or MN DNR to take depredating wolves. We have chosen to apply the proven success of this program to the other midwestern States, with only two minor changes. The first of those changes allows tribes or their designated agents to undertake depredation control actions on reservation lands without needing a Federal permit. The other change increases the area in which trapping can occur from the one-half mile allowed in Minnesota to 1 mile in Wisconsin and Michigan and 4 miles throughout the remaining area covered by the special regulation. We believe this approach will provide sufficient ability to control problem wolves without significantly impacting the ongoing wolf recovery in Wisconsin and Michigan.

Issue 6: The Service should require farmers to employ adequate animal husbandry practices in the Midwest as a prerequisite to being eligible for depredation control actions or compensation.

Response: While there is some evidence that supports the theory that certain animal husbandry practices will reduce the likelihood that a farm will experience wolf depredation, the only quantitative study on the subject in the Midwest to date did not find any clear connections between farm layout, animal husbandry practices, and wolf depredation incidents (Mech *et al.* 2000). Furthermore, even the most careful and protective livestock producer can still fall victim to wolf depredations. Given the uncertainty of success from ''better'' animal husbandry practices, we will not require such practices, but will continue to advocate for their use. Similarly, USDA/APHIS-Wildlife Services also recommends such practices and provides livestock producers with information on these practices.

Depredation compensation payments are made by State agencies or private organizations, not by the Service. The Service cannot dictate the criteria for such payments.

Issue 7: The special regulation for Michigan is too subjective. Depredation by a wolf should be proven beyond doubt, the identity of the depredating wolf should be identified, and only that individual wolf should be trapped and removed.

Response: The special regulation requires that ''the depredation was likely to have been caused by a gray wolf'' in order for trapping and removal operations to commence. Evidence, including tracks, location of bites, size and spacing of incisor punctures, and the presence and extent of subcutaneous hemorrhaging will usually allow trained depredation incident investigators to determine whether the predator was a wolf or coyote, and can even determine if a wolf killed the domestic animal or merely scavenged on it after it had died from other causes. If the evidence does not allow the investigator to conclude that a gray wolf likely was the cause of the mortality, then lethal depredation control actions cannot be carried out. The ''likely to have been caused'' standard has been used successfully in wolf depredation control activities in Minnesota for many years, and has allowed the wolf population in that State to continue to increase. We do not believe it will result in excessive wolf mortalities in Wisconsin and Michigan.

We agree that an ideal depredation control program would remove only the wolf that killed the domestic animal, and the remainder of the pack would then pursue only wild prey. However, this scenario is unrealistic for two main reasons. First, it is not possible to determine which pack member or members attacked and killed the domestic animal, short of capturing the entire pack and doing stomach content analysis within a few days of the depredation incident. This is not practical and in most cases it is impossible. Second, the wolf pack functions as a hunting unit and in many cases the entire pack, not just one member, develops the practice of preying on domestic animals. Thus, trapping and removing a single pack member will usually not stop the depredation problem.

Issue 8: The special regulations for Minnesota should be consistent with the special regulations for other areas of this DPS.

Response: We agree that the special regulations would be slightly easier to understand if they were identical across all the areas included within the Eastern DPS. However, the Act allows special regulations under section 4(d) to vary with the conservation needs of the

species in that area. Therefore, we have established smaller lethal control distances (that is, the radius around the depredation site in which lethal control can be carried out) in Michigan and Wisconsin than in the other States covered by the same 4(d) rule, in order to reduce the likelihood that the wrong wolves might be trapped in those two States with high wolf population densities. In addition, this 4(d) rule does not apply to any of the States in the Eastern DPS that are east of Ohio.

With respect to the differences between the continuing special regulation for Minnesota wolves (50 CFR 17.40(d)) and this new special regulation for most of the Eastern DPS (50 CFR 17.40(o)), we chose to propose no changes to the pre-existing Minnesota special regulation, because it was the product of a court order and has been functioning well and reducing wolf depredation problems for over 15 years. Modifying its language in any way could require Federal Court approval. Any modifications that might be seen as significant would likely result in litigation, or might otherwise delay the implementation of this final rule. Therefore, we have chosen to defer any changes to the special regulation for gray wolves in Minnesota.

In order to minimize any confusion, we have made the special regulation for the Eastern DPS consistent within a State's boundaries, so that State agencies, or the designated agents of State agencies, will only have to be concerned with a single set of regulations for that State. Furthermore, where Native American reservation boundaries cross State boundaries, the gray wolf special regulations are identical on both sides of the State boundary, and thus are consistent within individual reservations. Thus, we believe the possibilities for confusion in complying with the 4(d) rule for the Eastern DPS have been minimized.

P. Habitat Protection for Gray Wolves

Issue: Numerous comments expressed the belief that suitable gray wolf habitat should receive additional protection prior to reclassification, or that we should reassess the threats of habitat destruction and modification. Most of these comments dealt with the proposed Western Great Lakes DPS and the proposed Northeastern DPS; some comments specifically suggested that we require additional protection of roadless habitat in Wisconsin.

Response: From a review of gray wolf population data in western Great Lakes States and the northern U.S. Rockies, it is clear that wolf populations have increased dramatically under the habitat protections that have existed over the last several decades. Even in the two areas (Wisconsin and northwestern Montana) where wolf population growth had slowed or had been temporarily stalled, inadequate habitat protection was not the causative factor, and population growth has resumed in both areas in the absence of additional habitat protection measures.

At such time as we consider the delisting of gray wolves, we will review changes in habitat protection that would result from the elimination of the protections of the Act. The impacts of those changes will be part of the threats analysis that will accompany any delisting proposal, and will be considered in any final decision on delisting. However, as the current action is a reclassification which retains the current habitat protections of the Act, we believe the concerns expressed for its adverse impacts on habitat protection are unfounded.

Q. Compensation for Depredation by Gray Wolves

Issue: Several concerns were expressed regarding the payment of compensation to the owners of domestic animals, including pets and livestock, that are reported as killed or injured by gray wolves. Some commenters opposed such compensation and recommended that compensation funds should instead be used to reduce or prevent wolf depredation. Other commenters supported compensation for livestock losses caused by wolves; some commenters also would like compensation to be available in instances of wolf depredation on pets. There were comments both supporting and opposing a requirement for verification of wolf depredation in order for an owner to receive compensation. Other comments dealt with the amount of compensation.

Response: The Service does not provide monetary compensation for damage caused by any wildlife, including financial losses resulting from domestic animals being killed or injured by gray wolves. All such compensation programs are run by State agencies or private organizations and are not funded in any way by the Service. In the northern Rockies and the Southwest, wolf depredation compensation payments are made by Defenders of Wildlife. In the Midwest, wolf depredation compensation payments are made by the Minnesota Department of Agriculture, WI DNR's Nongame Wildlife Fund, and MI DNR, with partial financial support from private conservation organizations.

As we are not involved in wolf depredation compensation payments and do not envision becoming financially involved in these programs, we recommend that such comments be sent to the appropriate State agencies and Defenders of Wildlife.

R. Comments Regarding the Proposed Northeastern DPS

Issue: We received a diverse array of comments dealing with various aspects of the proposed Northeastern DPS and the special regulation proposed for that DPS. The comments spanned a spectrum from strong support for establishing a Northeastern DPS and recovering gray wolves there, to intense opposition to any steps towards wolf restoration in the Northeast. Other issues include suggestions for changing the special regulation that was proposed for gray wolves in the Northeastern DPS (for example, the provisions for lethal take of wolves, wild ungulate impacts, and States' roles), comments on whether those wolves should be listed as threatened or endangered, the boundaries of the DPS, the taxonomy of the historically resident wolf and the potential of hybridization with coyotes, the use of an experimental population designation, threats to wolves from disease and human activity and development, the role of public versus private land, habitat suitability and protection, prey availability, fear of lawsuits resulting from the incidental take of gray wolves on private lands, the cost of wolf restoration, and the need for public education programs to promote wolf restoration in a Northeastern DPS.

Response: As discussed elsewhere in this document, when we drafted our gray wolf reclassification proposal, we believed there may have been sufficient information to support the establishment of a gray wolf DPS in the northeastern States of New York, Vermont, New Hampshire, and Maine. If such a gray wolf DPS were to be established, we stated that we would initiate recovery planning to determine the feasibility of restoring a viable gray wolf population in that area and the best way to accomplish such a restoration. We proposed that gray wolves in the Northeastern DPS should be classified as threatened, and we also proposed special regulations under section 4(d) of the Act for gray wolves in this DPS. Both threatened classification and the special regulations were intended to increase the management flexibility for the States, tribes, and the Service in order to more effectively accomplish gray wolf recovery there.

In our July 13, 2000, proposed rule, we specifically requested comments and

additional information on the proposed Northeastern DPS and the associated proposed special regulation. Since that time we have paid particular attention to two important issues—insufficient evidence of a resident population of wolves in the Northeast and the identity of any such wolves and the wolves that historically occupied the Northeast.

Regarding the first issue, despite ongoing efforts by individuals and several conservation organizations, no reliable data support the contention that a population of wild wolves currently exists in the northeastern States. While there were three individual wolves or wolf-like canids killed in Maine and Vermont within the last 10 years, their origins are unknown, and there have been no subsequent confirmed sightings of pairs or packs of wolves. Thus, in view of the lack of reliable data showing that a wolf population exists in this area, we are unable to designate a separate DPS there. We cannot list a DPS when we lack data showing that a population exists.

We believe the second issue—the identity of the recent and historical wolf of eastern North America—remains unresolved. Until scientific data and analysis can conclusively determine which large canid historically occupied the Northeast, we are unable to determine which wolf, if any, would be considered for restoration there. We currently are unconvinced that the gray wolf was not the historical wolf in at least a portion of the Northeast, so we will not delist the gray wolf in that region on the basis of the assumption that it was listed in error. At this time we will maintain the Act's protection by including this geographic area in a threatened Eastern Gray Wolf DPS that also includes the proposed Western Great Lakes DPS and several other States.

Because we are not finalizing a listing of the proposed Northeastern DPS and are not finalizing the proposed 4(d) rule that was intended to provide management flexibility in order to promote wolf restoration within that DPS, we will not further address the many comments that dealt with these issues. However, if we receive reliable information supporting the existence of a northeastern wolf population, or if we subsequently determine that the gray wolf was the historical resident wolf in the Northeast, we could again consider listing a separate gray wolf DPS in the Northeast. At that time we will review all the issues that were raised during this comment period and endeavor to address them in any DPS proposal that we might publish.

S. Use of Scientific Data

Issue 1: A number of commenters stressed that our decision should be based on sound scientific data and analysis. Some of these comments accused us of improperly considering economic, political, or other factors when developing the proposal. We were accused of improperly favoring livestock interests as well as allowing undue influence from environmental organizations.

Response: The commenters are correct in their assertion that our decision should be based on sound scientific data and analysis. The Act clearly requires us to use only scientific and commercial data that are relevant to the five categories of threats that might be affecting the species.

The Service has followed the requirements of the Act in coming to a decision on this final rule. We used the best scientific data available as we developed the proposal, and in this final rule we have updated (and corrected, as described in the Technical Corrections category, above) wolf population and mortality figures wherever appropriate. In addition, newly available scientific data resulted in our decision to not finalize the listing of a Northeastern DPS at this time and to make changes to the proposed special regulation for the Western DPS.

Special interest groups have not had any undue or improper influence on this rulemaking, nor have we considered economic factors in our reclassification decision. Some commenters who expressed such a concern may have come to that conclusion as a result of a misunderstanding of the applicability of our ''Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act'' (59 FR 34272, July 1, 1994; available at *http://endangered.fws.gov/policy/pol002.html*). That policy states that we will minimize the social and economic impacts of implementing recovery actions and will consider such impacts as we develop recovery plans. However, the Act prohibits such economic considerations during the rulemaking process for listing, reclassification, and delisting actions, and the Administrative Procedures Act prohibits Federal agencies from providing special interest groups any special access to the rulemaking process. This rulemaking has complied with those prohibitions.

Issue 2: The Service should clarify the process by which wolf population estimates are determined.

Response: In the northern Rocky Mountains the wolf population estimate is primarily derived by counting wolves in packs that contain radio-collared members. The breeding pair count is also estimated by radio telemetry and by counting the number of wolf groups that contain an adult male and an adult female wolf that raise at least two pups that survive until December 31.

Descriptions of the methods used to estimate gray wolf populations in the midwestern States have been added to the sections that describe the recovery progress of gray wolves in that area.

T. Requests for Consideration of Factors Other Than Threats to the Species

Issue 1: We received comments that recommended that decisions on the Act's protections for gray wolves should be based on a wide variety of factors in addition to the threats to the species. These factors include economic considerations (depredation costs, funding for game habitat acquisition and restoration efforts, costs and benefits to local communities, agency budgets), threats (or the lack of threats) to human safety and to pets, impacts on the Carolina Dog, ecological impacts to all native wildlife (and specifically to wild ungulates), the intrinsic value of the species, the ecological benefits provided by wolves, the wolf's role as an indicator species, and ethical concerns.

Response: We understand these concerns and the intensity with which they are felt by the commenters. Economic concerns, threats to humans and domestic animals, ecological effects, and impacts on other species (especially rare and declining species) are all taken into consideration as we develop and implement recovery programs for listed species. However, the Act clearly states that our decisions to list, reclassify, and/or delist a species can only be based on scientific and commercial data that deal with threats to the species and its habitat. These threats are broken into five factors by the Act (section 4(a)(1)), which are individually addressed below. While we recognize that there are many direct and indirect benefits and costs that arise from the listing or delisting of a species, the Act prohibits us from considering any factors except the threats to the species.

Issue 2: When we implement recovery programs for listed predator species, we should, or should not, consider the impact of wolf predation on wild ungulate populations.

Response: When implementing recovery programs for the gray wolf, our 1994 Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act (59 FR 34272) requires that we strive to

minimize unnecessary social and economic impacts of those recovery actions. The Service is aware that while generally wolf predation is not expected to cause significant negative consequences to wild prey populations, there are conditions where it may. The 4(d) rule for the Western DPS allows for those wolves to be relocated should they cause significant negative effects on wild ungulate populations. The Service has initiated, and cooperated on a multitude of, wolf-ungulate relationship studies in Montana, Idaho, and Wyoming since the early 1980s to assess or detect the potential impact that wolf predation may have on various ungulate populations. Most of these projects were done by local university graduate students and in cooperation with other State and Federal resource management agencies. We will use the best scientific data available in future decisions involving actions to reduce wolf impacts on wild ungulate populations.

U. State Wolf Management Plans

Issue: A great deal of concern was expressed by a number of commenters about whether State protection and management of gray wolves would be adequate to ensure the continued viability of those wolf populations if Federal protections are reduced (via reclassification) or removed (via delisting). Some commenters stated that State protection will not be adequate or effective, and for that reason gray wolves cannot be delisted or reclassified to threatened. Other commenters want the Service to assist in the development of State wolf management plans, set minimum standards for such plans, and fund their implementation. Some commenters would like every State that has the potential for wolf recovery to be required to develop a management plan prior to delisting, even if no wolves currently reside in the State. The need for wolf management plans to be coordinated across State lines was another concern.

Response: When a species is listed as threatened or endangered, we develop a Federal recovery plan that describes the actions believed to be necessary to ensure the long-term survival of the species. Other Federal agencies, States, tribes, conservation organizations, and other affected parties are encouraged to assist in implementing these recovery actions, and in some cases non-Service entities take the leading role in carrying out these actions. For the gray wolf, the active and vigorous involvement of numerous State and tribal agencies and private conservation organizations has been instrumental in achieving the degree of wolf recovery that has already occurred.

States and other Federal agencies sometimes develop their own management plans that identify management actions they will take while the species is listed and/or after the species is delisted. If a State or other Federal agency is interested in assuming management responsibility for the species while the species is listed, the Service must approve the plan to ensure it is consistent with the recovery of the species and otherwise consistent with the Act prior to delegating management responsibility to that State or other Federal agency.

Even if a State or other Federal agency does not assume management responsibility for the species while it is listed, delisting of the species will require that we evaluate State or other Federal agency management of the species following removal of the protections of the Act. Section 4(a)(1) of the Act requires the Secretary to determine whether any species is an endangered species or a threatened species because of any of five factors including the ''inadequacy of existing regulatory mechanisms.'' Section 4(b) establishes the basis for such determinations, which includes consideration of efforts being made by any State to protect the species. In the context of a delisting determination, the Service must show that a threat is no longer at a level warranting listing or, in the absence of the protections afforded by the Act, that other existing regulatory mechanisms will adequately remove or reduce the threat to the species. Such an analysis will often be greatly facilitated if there are approved State or tribal management plans that will be implemented following delisting.

We are willing to assist States and tribes with the development of their wolf management plans. We will encourage States and tribes to develop plans that provide for coordinated actions across State and reservation boundaries to the extent possible. For example, we are currently working directly with the Bad River Band of Chippewa Indians and the WI DNR to develop special management practices for Reservation wolves that might become involved in depredation incidents while off the Reservation.

Because management plans are not required by the Act or its implementing regulations, we cannot force States and tribes to develop them or to coordinate them across their boundaries. However, those States that are interested in gaining full management authority for gray wolves have already begun working on such plans. In most cases we have been involved to varying degrees in the development of these plans, and we are familiar with the level of the State's commitment to their implementation. For plans that have been completed and subsequently reviewed by the Service (MI DNR 1997, WI DNR 1999a, and MN DNR 2001), these plans will greatly assist our future evaluation of post-delisting threats to wolves in these States. However, because the Act overrides State laws, regulations, policies, and management plans, these State plans can only be implemented to the extent that they are consistent with the protections of the Act and any Federal regulations promulgated under the provisions of the Act. Therefore, many of the provisions of these State wolf management plans cannot be implemented while gray wolves are federally listed as threatened within the respective State. Specifically, this means that public hunting and trapping of wolves and preemptive lethal control of potentially depredating wolves without a Federal permit cannot be initiated by the States, nor will livestock producers or landowners be able to freely kill wolves while they are classified as threatened by the Service. The Act and the several NEP and 4(d) regulations will restrict take of gray wolves, regardless of the existence of State or tribal wolf management plans in the Midwest and West, until wolf populations are delisted.

At such time as we consider a proposal to delist the gray wolf, we will fully evaluate the impacts of State plan implementation. Those impacts will be discussed in any delisting proposal that we develop, and will be considered in any final decision on delisting. Regardless of whether or not State and tribal wolf management plans have been completed or are being developed, we must conduct a threats analysis as required by the Act. If completed wolf management plans exist, we will use them to assist in the threats analysis. If completed management plans are lacking, we will complete the threats analysis using whatever information is available to us. However, the absence of one or more State management plans may impair our threats analysis to the extent that delisting consideration might be deferred.

We have been funding, or partially funding, State and tribal wolf monitoring, research, and management planning efforts for gray wolves. Such funding has occurred in the Midwest, the northern Rockies, and the Southwest. We intend to continue such funding, as our annual budgets allow, for the reclassified wolf populations in the Midwest (Eastern DPS) and the

northern Rockies (Western DPS). However, the Service lacks any mandate to fund State and tribal management or monitoring actions for species that have been delisted.

V. Native American Concerns

A number of comments were received from Native American tribes and organizations and from individuals who identified themselves as Native Americans. While many of these comments have been addressed in other issue categories, the comments from Native American interests that are not addressed elsewhere are covered in this category.

Issue 1: The Service should consider the cultural value of wolves to Native Americans when making a reclassification or delisting decision for the gray wolf.

Response: During the development of this regulation, we contacted many tribes and Native American organizations to ensure that they were aware of the regulations we proposed on July 13, 2000, and to learn of their concerns with those proposed regulations. We will continue this dialogue, and expand these contacts as we proceed with our wolf recovery programs and ultimately propose the delisting of one or more gray wolf DPSs. In addition, we will followup with specific requests by several tribes for assistance with developing management plans, negotiating wolf protection agreements with States, and training, as described in the following responses. However, the Act provides no authority to extend its protections beyond the point at which a species no longer warrants a threatened or endangered status, so we cannot unreasonably delay or forgo reclassifying or delisting the wolf for cultural or spiritual reasons.

Issue 2: The Service should restrict or prohibit lethal take of wolves within treaty ceded areas and on and around certain reservations.

Response: We understand the desire of several tribes to retain strong protections for gray wolves both on reservations and on lands surrounding the reservations. While there is no provision within the Act to maintain such Federal protections for species which no longer warrant a classification as threatened or endangered, we will work with the interested tribes and the appropriate States and strive to develop protective agreements for gray wolves on or near reservations. These agreements would replace some or all of the protections currently provided by their current endangered or threatened listings. We are currently working with the Bad River Band of Lake Superior Chippewa Indians of Wisconsin and the WI DNR to develop such an agreement that might serve as a prototype agreement for other reservations. This agreement potentially will provide protection to threatened, but depredating, Wisconsin gray wolves beyond that provided by the new 4(d) regulation, and could continue to apply after Wisconsin gray wolves are federally delisted.

Issue 3: The Service should delay its reclassification and delisting decisions to allow time for the development of an intertribal management agreement among tribes in the 1836 Treaty Ceded Area.

Response: We appreciate the interest in developing wolf management plans both on reservations and across the areas ceded by treaty to the United States Government. Such plans would facilitate sharing expertise, exchanging data, and implementing cooperative research efforts and would lead to more effective wolf management programs. However, the Act requires that we base a species' listing status on the threats affecting it, and on whether the species meets the Act's definitions of threatened and endangered. Developing such an agreement is likely to be a lengthy process, involving discussions and negotiations with a number of agencies that have wildlife management authority in ceded areas. Therefore, while we are interested in assisting with the development of such a management agreement, we cannot delay this reclassification decision until such an agreement is completed.

Issue 4: The Service should provide depredation control training to the Mille Lacs Band (Minnesota Chippewa Tribe) conservation officers.

Response: Our proposal contained no changes to the listing of the gray wolf in Minnesota, nor to the special regulation that allows for the lethal control of Minnesota gray wolves depredating domestic animals. Currently, all wolf depredation control actions in Minnesota are carried out by the USDA/APHIS-Wildlife Services, but the special regulation allows us to designate agents to conduct depredation control activities. We will pursue this request by the Mille Lacs Band to become involved in depredation investigation and control activities to determine the extent of this interest and how any necessary training could be arranged.

Issue 5: The Service should require Minnesota DNR to coordinate with tribal governments in gray wolf management efforts.

Response: We agree that wolf management activities will be more effective and more efficient if they are coordinated across State and reservation boundaries. We will continue to encourage such cooperation, and will assist in the development of agreements to enhance this cooperative management.

Issue 6: The special regulation for most of the Eastern DPS should extend to tribes the authority to take, under section 6 cooperative agreements, for scientific research or conservation purposes.

Response: Section 6 of the Act gives us the authority for the development of endangered species cooperative agreements with any State that ''establishes and maintains an adequate and active program for the conservation of endangered species and threatened species.'' Once such an agreement is approved, the State is eligible for cooperative endangered species grants, and gains some additional take authorities under the regulations at 50 CFR 17.21(c)(5) and 17.31(b). Subparagraph (2)(v) of the new special regulation at 50 CFR 17.40(d) contains parallel language for States with conservation agreements developed pursuant to section 6. However, tribes are not eligible for cooperative agreements under section 6, so we cannot extend to them any of the other benefits or authorities that come from such agreements. However, tribes can receive permits to take threatened wolves for scientific research or conservation purposes under 50 CFR 17.32.

However, the new special regulation for most of the Eastern DPS extends to tribes two significant new authorities. One provision allows them to salvage from within their area of jurisdiction, and without a permit from us, dead gray wolf specimens that may be useful for traditional, cultural, or spiritual purposes. The second provision allows a tribe to conduct lethal wolf depredation control activities within its area of coverage within reservation boundaries without a permit from us. Both of these provisions are available for the tribes to use at their discretion.

Issue 7: The proposed tribal salvage regulation for parts of the Eastern DPS should be expanded to provide tribal governments with half of the salvageable species that are taken from the ceded territories.

Response: While the gray wolf is listed as a threatened or endangered species under the Act, we are required to put salvaged wolves and wolf parts to those uses that best serve the species' conservation. However, due to the continuing recovery and increase in wolf numbers in the Midwest, we believe sufficient wolf carcasses are

available to meet all remaining recovery needs while also giving tribes the authority to salvage carcasses and wolf parts found on reservations for traditional, cultural, or spiritual purposes. As is the case for wolves salvaged by State and Federal agents, the new special regulation under § 17.40(o) provides that these tribal-salvaged wolves will be reported to us and will be retained or disposed of ''only in accordance with directions from the Service.'' We will routinely allow the tribes to retain such wolves and wolf parts. However, if an overriding conservation need arises—such as a disease outbreak that requires conducting standardized necropsies of dead wolves—we may need to use parts or all of some of those wolves for conservation purposes. Tribal-salvaged wolves not needed for such urgent conservation purposes will be retained by, or returned to, the tribes. During the time that the gray wolf remains protected by the Act, we cannot categorically provide salvaged wolves or wolf parts to non-conservation uses, but we will attempt to provide, and to allow the tribes to salvage and retain, sufficient wolf carcasses and wolf parts to meet their needs for traditional, cultural, or spiritual purposes.

We previously have authorized APHIS-Wildlife Services in Minnesota to make 50 percent of wolves trapped by that Federal agency for depredation control available to tribes for cultural purposes. That practice for Minnesota wolves will not be changed by the new regulation.

Issue 8: The Service should consult with tribes in the Dakotas to ensure that they have a role in the management of wolves on-reservation and within their State.

Response: We acknowledge the desire of many Native American tribes to have management authority for those wolves found on their reservations if the protections of the Act are removed in the future. The Department of the Interior (Department) will assist those tribes in this pursuit. The Department will also assist interested tribes in developing cooperative wolf management agreements with the appropriate State agencies for off-reservation wolves.

W. Captive Gray Wolves and Wolf-Dog Hybrids

Issue 1: One peer reviewer questioned what role captive gray wolves might have in our ongoing wolf recovery programs, and if that role was sufficient to warrant that captive wolves retain the Act's protections for as long as their source population is listed as threatened or endangered.

Response: We acknowledge that where our wolf recovery programs are nearing completion there may be only minor and largely speculative recovery roles remaining for captive gray wolves. Such roles would likely be for research, and such studies might be DPS-specific (for example, genetic or taxonomic studies, or disease resistence investigations). However, for the Southwestern (Mexican) gray wolf recovery program, many of the wolves currently in captivity retain great importance as potential subjects for reintroduction. For these reasons, we have chosen to continue to protect captive gray wolves according to their original source location in the wild.

Issue 2: Various respondents recommended that the Service address the potential problems associated with wolf-dog hybrids, regulate their breeding and commercialization, and provide public education on wolf-dog hybrid concerns.

Response: We are well aware of the potential problems that wolf-dog hybrids can cause for our various wolf recovery programs. This final rule does not extend the protections of the Act to wolf-dog hybrids, so such animals can be removed from the wild if their presence is detrimental to wolf recovery. However, the Act provides no authority for the Service to regulate their breeding and commercialization; these actions must be undertaken at the State and local level. We will continue to support State efforts that restrict or prohibit the release of wolf-dog hybrids in wolf recovery areas.

X. Other Comments Specific to Minnesota

Issue: Our proposal contained no suggested changes for Federal wolf protections in Minnesota. The proposed rule was developed in part to bring consistency to the legal protections afforded by the Act to all midwestern wolves by listing them all as threatened (as Minnesota wolves have been listed since 1978) and by applying to them a special regulation that is very similar to the special regulation that has applied to Minnesota wolves since the mid-1980s. The proposal stated that the Minnesota special regulation (50 CFR 17.40(d)) would continue to apply to Minnesota gray wolves.

However, we received numerous comments that either suggested changes or opposed any changes to the Act's current protections for Minnesota gray wolves. Minnesota-specific comments included recommendations to decrease, remove, or increase those Federal protections; opposition to lethal depredation control of Minnesota wolves; criticism of the MN DNR's wolf management plan (much of which cannot be implemented until the wolves are federally delisted); suggestions for wolf hunting in Minnesota; and recommendations for changes to the current special rule for Minnesota wolves.

Response: Our final rule follows the proposed rule in making no changes to the Federal regulations that apply to the gray wolf in Minnesota. Because the proposed rule did not contain proposed changes that would affect the Act's protections for Minnesota wolves, we cannot consider making any such regulatory changes at this time. Therefore, we are not addressing any of these comments in this document. However, these comments will be considered as we subsequently consider proposing additional regulatory changes that might affect the Act's protections for Minnesota wolves.

Y. Suggestions for Changes to Gray Wolf Recovery Programs

Issue: We received a large number of diverse comments which suggested changes to one or more gray wolf recovery programs. These comments included suggestions to maintain and expand recovery partnerships (for example, with Native American tribes, private wolf research centers, landowners, Canada, and Mexico), map wolf travel corridors, increase law enforcement and protection, and provide more public education, ideas for additional research, and ways to reduce conflicts with human activities.

Response: Because these comments did not address the proposed regulatory changes, but instead dealt with recovery actions and recovery plan implementation, they will not be discussed here. However, they will be referred to the appropriate Service gray wolf recovery teams or recovery coordinators for their consideration. Recovery programs and recovery plans are flexible and are intended to adapt to new knowledge, ideas, methods, and technology. Several of our gray wolf recovery plans may be reviewed for possible revision as a result of this rulemaking, and these comments will be considered for incorporation into those plans if they are revised. It is our policy to make drafts of revised recovery plans available for public review and comment, so there will be additional opportunities for input into our continuing gray wolf recovery programs.

Z. Miscellaneous Comments

Issue 1: Commenters suggested that we should reconsider alternatives that were discussed in our proposal but which were not our preferred alternative. The alternatives of keeping gray wolves listed as endangered wherever they are currently so listed, and retaining the endangered status only throughout the West, were specifically recommended for our reconsideration.

Response: As we reviewed the comments and additional data that have become available since we drafted the proposed rule, we have reconsidered alternatives described in the proposal, as well as other alternatives that might be appropriate. With regard to the above two specific alternatives recommended for reconsideration, our evaluation of the current biological status and threats to gray wolves clearly indicates that both the Western and Eastern DPSs no longer warrant a classification as endangered, and are more appropriately classified under the Act as threatened species.

Our final rule is a modification of the proposed rule that now includes components of several other alternatives that were discussed in the proposal. One of those alternatives dealt with various boundary configurations for a DPS in the eastern United States and another included larger DPSs that included all of the 48 States.

Issue 2: How will the Service regulate wolf game farms and wolf pelt farms following reclassification?

Response: We are unaware of any existing wolf game farms or wolf pelt farms that use wolves that originated from within the 48 States or Mexico. Wolves in such farms would have been subject to the protection of the Act since 1978, and they could not have been legally killed for commercial purposes nor transported across State lines for commercial activities unless those purposes and activities promoted the species' recovery and were allowed under a permit we issued under 50 CFR 17.22 or § 17.32. This is an unlikely scenario, and we doubt that such wolf game farms or pelt farms exist. This situation will not change due to this reclassification, as the same Federal regulations will continue to apply to commercial use of threatened gray wolves.

Under this reclassification, gray wolves in captivity remain protected by the Act, on the basis of the locations at which they, or their ancestors, were removed from the wild, regardless of where they are being held. Thus, Mexican wolves that are in captivity in New Orleans remain endangered, while a wolf from Michigan held at the same New Orleans facility is classified as threatened. Captive wolves from Canada or Alaska remain unprotected by the Act, even if they are held in facilities in one of the gray wolf DPSs.

Facilities that breed gray wolves for use as pets, for exhibition, or for other nonrecovery purposes remain subject to the same legal requirements as they were before this regulatory change. Interstate commerce in such captive raised wolves continues to be prohibited by the Act, except under a Federal permit, if those wolves or their ancestors originated from within one of the DPSs. Intrastate commerce in such wolves is not regulated by the Act.

Issue 3: Several commenters expressed concern that wolf populations will decrease substantially if Federal protection is reduced or removed and recommended that we establish an expedited process to reclassify such wolves from threatened to endangered (or relist them if they had been delisted).

Response: Our analysis of the threats that gray wolves in the two reclassified DPSs will experience after their reclassification indicates that wolf populations will not decline if they are reclassified as threatened. However, wolf numbers and range will continue to be monitored at the same level of intensity as before this reclassification, so we will have data that will alert us if a population decline is occurring; Thus, we can reclassify wolves back to endangered status if necessary.

The Act clearly recognizes the possibility that the Service might reclassify or delist a species prematurely, or that unanticipated threats may cause a species to unexpectedly decline following a reclassification or a delisting. The Act directs the Service, in cooperation with the States, to monitor delisted recovered species for at least 5 years after they are delisted, and to relist them—including emergency relisting—if the monitoring indicates that such action is necessary. Thus, the Act already contains a process to relist a species, and to do so on an emergency basis, if necessary. Similarly, the Service also has the authority to reclassify a species from threatened to endangered if monitoring data indicate the need. An emergency reclassification from threatened to endangered is possible, if monitoring indicates this is necessary.

The new special regulations for the Western and Eastern DPSs both have reporting requirements for all wolves taken under their provisions. Thus, we will have information on any increased level of take that occurs as a result of these new rules, and we can promptly evaluate that level and make changes to the regulations, if appropriate.

In addition, the Act contains a provision (section 4(b)(3)) that allows an interested party to provide data to us and to petition to have a species listed, delisted, or reclassified. This petition process is a mechanism to direct our attention to species' data or to threats that we might otherwise overlook.

Issue 4: All costs of wolf monitoring, depredation control, and depredation mitigation efforts in Idaho should be paid by the Federal government.

Response: The Federal government currently funds all wolf-related activities in the Western DPS except for wolf depredation compensation payments, which are paid by Defenders of Wildlife. When the wolf population is recovered and delisted, and managed solely by the respective States and tribes, other sources of funding may be necessary. The Service cannot use its endangered species funding on species that are no longer listed under the Act, except to conduct the post-delisting monitoring required by section 4(g) of the Act. The States of Montana, Idaho, and Wyoming have stated that, if the wolf population is to be delisted and managed solely by the States, some form of Federal funding should be provided, or they would not support delisting. This issue still has to be resolved.

Issue 5: The Service should be responsible for any experimental population wolves that enter Wallowa County, Oregon.

Response: The Service can manage any wolves that leave the nonessential experimental population areas, including those that might disperse into Oregon. The experimental population rules allow us to retrieve or manage any wolf known to be an experimental population animal regardless of its location. The Service has stated that any wolf that disperses outside of the experimental population area and attacks livestock will be killed. A wolf that has not caused conflicts with people or livestock may be monitored, but it generally will not be captured or managed. The Service has no interest in spending time or funding on lone wolves that may have dispersed into other States and are not causing problems. The Service's only active recovery programs in the northern Rocky Mountains will be in Montana, Idaho, and Wyoming. The Service has no plans or interest in management for wolf restoration in adjacent States. After delisting, wolf populations and their management would be the ultimate responsibility of those respective State

and tribal governments and their natural resource agencies.

AA. Nonsubstantive Comments

Comments Not Germane to this Rulemaking. We received numerous comments covering a broad spectrum of wolf-related issues that are not the subject of this rulemaking. Some of these merely are beyond the scope of this rulemaking, while others dealt with issues that are beyond the authority of Service and of the Act. These comments covered such subjects as support for the Conservation and Reinvestment Act and the Roadless Initiative; support for, and opposition to, grazing on public lands; wolf reintroduction in Scotland; listing Alaskan wolves as endangered; and the red wolf. Since these issues do not relate to the action we proposed, they will not be addressed here.

Another set of nongermane comments dealt with delisting wolves in the western Great Lakes States (now included in the Eastern DPS), and the conditions (legal, biological, and social) that should occur before and after such a delisting. We again emphasize that we have not proposed the delisting of these gray wolves, and we are not taking such action at this time. Therefore, comments relating to delisting western Great Lakes States wolves will not be further discussed in this document. However, we appreciate the concerns expressed in those comments, and we will review those concerns at such time as we begin working on a delisting proposal for those wolves.

Expressions of Support or Opposition. Finally, we received a large number of comments expressing support for, or opposition to, wolf recovery and the proposal (or parts of it) without further elaboration or explanation. Those comments, and the interest they represent, are appreciated; however, because they did not contain scientific data, information on threats, or any other substantive information, they will not be further addressed in this final rule.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data used for classification of the species. This analysis must be based upon the same five categories of threats specified in section 4(a)(1).

In a subsequent section of this rule, we describe the three DPSs that are now being given separate treatment under the Act (refer to the *Designation of Distinct Population Segments* section above). These DPSs are the Western DPS, the Eastern DPS, and the Southwestern DPS. Therefore, for consistency and clarity in discussing each threat, the following analysis of the five categories of threats contains separate discussions for wolves within the geographic areas encompassed within the three DPSs.

(Note that the Eastern DPS includes those areas that were identified in our July 13, 2000, proposal as the Western Great Lakes DPS and the Northeastern DPS. Refer to the *Designation of Distinct Population Segments* section above for a discussion of the reasons for combining the two proposed DPSs.)

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. Our evaluation of the future threats to the gray wolf in the Eastern DPS-especially those threats to wolves in the Midwest that would occur after removal or reduction of the protections of the Act-is partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf were to be federally delisted in the future, then State and tribal management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation or exploitation of gray wolves.

Even in those areas where the gray wolf is now reclassified to threatened status, many aspects of State and tribal management plans cannot yet be implemented because of the remaining and overriding prohibitions of the Act. However, State and tribal plans, to the extent that they have been developed, can serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued progress toward full recovery under the Act. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public. Therefore, below we provide some details on the components of the wolf management plans that currently exist and analyze their impact on gray wolves in light of the changes in Federal protection that arise from this rule.

After a thorough review of all available information and an evaluation of the following five factors specified in section 4(a)(1) of the Act, we are changing the Act's protections for the gray wolf across the conterminous 48 States, except for Minnesota, portions of several southwestern and southern Rocky Mountain States, Mexico, and the nonessential experimental populations in the northern U.S. Rocky Mountains and southwestern U.S. Significant gray wolf recovery has occurred, and continues as a result of the reduction of threats as described below.

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

General. A popular perception is that wolves inhabit only remote portions of pristine forests or mountainous areas, where human developments and other activities have produced negligible change to the natural landscape. Their extirpation south of Canada and Alaska, except for the heavily forested portions of northeastern Minnesota, reinforced this popular belief. However, wolves survived in those areas not because those were the only places with the necessary habitat conditions, but because only in those remote areas were they sufficiently free of the human persecution that elsewhere killed wolves faster than the species could reproduce (Mech 1995).

Wolf research, as well as the expansion of wolf range over the last 2 decades, has shown that wolves can successfully occupy a wide range of habitats, and they are not dependent on wilderness areas for their survival. In the past, gray wolf populations occupied nearly every type of habitat north of mid-Mexico that contained large ungulate prey species, including bison, elk, white-tailed deer, mule deer, moose, and caribou. An inadequate prey density and a high level of human persecution apparently are the only factors that limit wolf distribution (Mech 1995). Virtually any area that has sufficient prey and adequate protection from human-caused mortality could be considered potential gray wolf habitat.

Eastern DPS. In the western Great Lakes States, wolves in the densely forested northeastern corner of

Minnesota have expanded into the more agricultural portions of central and northwestern Minnesota, northern and central Wisconsin, and the entire Upper Peninsula of Michigan. Habitats currently being used by wolves span the broad range from the mixed hardwood-coniferous forest wilderness area of northern Minnesota; through sparsely settled, but similar habitats in Michigan's Upper Peninsula and northern Wisconsin; into more intensively cultivated and livestock-producing portions of central and northwestern Minnesota and central Wisconsin; and even approaching the fringes of the St. Paul, Minnesota, and Madison, Wisconsin, suburbs. Wolves are also dispersing from Minnesota into the agricultural landscape of North and South Dakota in increasing numbers (Licht and Fritts 1994, Straughan and Fain 2002). Similarly, a gray wolf that had been radio-collared in Michigan's Upper Peninsula was recently mistaken for a coyote and killed in north-central Missouri, presumably traveling through expanses of agricultural land along the way (Missouri Department of Conservation 2001).

Based upon computer modeling, Wisconsin and the Upper Peninsula of Michigan contain large tracts of wolf habitat, estimated at 15,052 sq km (5,812 sq mi) and 29,348 sq km (11,331 sq mi), respectively (Mladenoff *et al.* 1995; WI DNR 1999a). In Wisconsin, much of this suitable habitat is on public lands, with most of these public lands being National, State, and county forest lands.

Wisconsin DNR biologists conducted a population viability analysis (PVA) using the computer simulation model VORTEX. The purpose of a PVA is to estimate extinction probabilities by modeling long-term species' population changes that result from multiple interacting factors. The resulting extinction probabilities may be able to provide some limited insight into the effects that management alternatives, environmental fluctuation, and biological factors may have on rare species' populations over many years.

Under most of the scenarios that were modeled by WI DNR, the results of the PVA indicated that a wolf population of 300 to 500 animals would have a low probability of extinction over a 100-year timeframe. However, the modeling indicated that the population might decline to a level that might trigger relisting under State law (fewer than 80 wolves for 3 years). ''[S]tate-relisting probabilities'' ranged from 10 to 40 percent for those scenarios which looked at a combination of moderate environmental variability and a 5 percent probability of catastrophic events. Within-State extinction probabilities were only 1 percent for those same scenarios (WI DNR 1999a). However, at this stage of their development, PVA models must be used with great caution, and it would be unwise to base management decisions solely on their predictions. (Refer above to section Summary of Comments and Recommendations, section B, *Compliance with Laws, Regulations and Policies, Issue #11* for additional discussion on the problems of population viability analysis.)

The Wisconsin wolf population has increased at an average annual rate of 19 percent since 1985, and at 26 percent annually since 1993. Wisconsin had at least 320 wild gray wolves in early 2002 (WI DNR 2002, Wydeven *et al.* 2002). The Michigan wolf population (excluding Isle Royale) has increased at an average annual rate of about 24 percent in recent years and was at least 280 wolves in early 2002 (MI DNR 2002). Wolf survey methods in both States focus on wolf packs and may miss many lone individuals, thus underestimating the actual wolf populations. However, it is safe to say that the combined gray wolf population in the two States (excluding Isle Royale, MI) was at least 600 animals in late winter 2001–2002.

Final State wolf management plans for Michigan and Wisconsin, respectively, have identified habitat protection as one of their top priorities for maintaining a viable wolf population. Both State wolf management plans emphasize the need to manage human access to wolf areas by avoiding increasing road densities, protecting habitat corridors between larger tracts of wolf habitat, avoiding disturbance and habitat degradation in the immediate vicinity of den and rendezvous sites, and maintaining adequate prey species for wolves by suitable habitat and prey harvest regulations.

Both the Michigan Plan and the Wisconsin Plan establish wolf population goals that exceed the viable population threshold identified in the Federal recovery plan for isolated wolf populations, that is, a population of 200 or more wolves for 5 consecutive years (U.S. Fish and Wildlife Service 1992a). Each State adopted this ''isolated population'' approach to ensure the continued existence of a viable wolf population within its borders regardless of the condition or existence of wolf populations in adjacent States or Canada.

The Michigan Plan contains a long-term minimum goal of 200 wolves (excluding Isle Royale wolves) and identifies 800 wolves as the estimated carrying capacity of suitable areas on the Upper Peninsula (MI DNR 1997). (''Carrying capacity'' is the number of animals that an area is able to support over the long term; for wolves it is primarily based on the availability of prey animals and competition from other wolf packs.)

The Wisconsin Plan identifies a management goal of 350 wolves, well above the 200 wolves specified in the Federal recovery plan for a viable isolated wolf population. After the Wisconsin wolf population reaches 250 (excluding wolves on Native American reservations), the species will be removed from the State's threatened and endangered species list (WI DNR 1999a). Wisconsin DNR is likely to begin the State delisting process in late 2002.

Three comparable surveys of wolf numbers and range in Minnesota have been carried out in recent decades. The first survey estimated a State wolf population of 1,235 in 1979 (Berg and Kuehn 1982). In 1989, 1,500 to 1,750 wolves were estimated in the State (Fuller *et al.* 1992). This represents an average annual increase of about 3 percent. The 1998 survey (Berg and Benson 1999) estimated that the State's wolf population was 2,445 animals, indicating an average annual growth rate of 4 to 5 percent during the intervening 9 years. While estimates of the wolf population that are made at about 10-year intervals do not provide any insight into annual fluctuations in wolf numbers that might be due to winter conditions, prey availability and vulnerability, legal depredation control actions, and illegal killing, these 3 population estimates clearly indicate that the Minnesota wolf population has continued to increase. As of the 1998 survey, the State's wolf population was approximately twice the planning goal for Minnesota, as specified in the Eastern Plan. (Refer to the *Recovery Progress of the Eastern Gray Wolf* section above, for additional details on the increase in numbers and range of Minnesota wolves.)

The MN DNR prepared a Wolf Management Plan and an accompanying legislative bill in early 1999 and submitted them to the Minnesota Legislature. However, the Legislature failed to approve the MN Plan in the 1999 session. In early 2000, the MN DNR released a second bill that would result in somewhat different wolf management and protection than would the 1999 bill. The Minnesota Legislature did not pass the 2000 Minnesota wolf management bill, but instead passed separate legislation directing the DNR to

prepare a new management plan based upon various new wolf protection and wolf take provisions also contained in that bill. MN DNR, in cooperation with the MN Department of Agriculture, completed a Wolf Management Plan (MN Plan) in early 2001 (MN DNR 2001).

The MN Plan's stated goal is ''to ensure the long-term survival of wolves in Minnesota while addressing wolf-human conflicts that inevitably result when wolves and people live in the same vicinity.'' It establishes a minimum goal of 1,600 wolves, with provisions to monitor the population and to take prompt corrective action if wolf numbers drop below that threshold. The MN Plan divides the State into 2 wolf management zones, designated as Zones A and B. Zone A corresponds to wolf management zones 1 through 4 in the Federal Eastern Recovery Plan, while Zone B constitutes zone 5 in the Federal Eastern Recovery Plan. Within Zone A, wolves would receive strong State protection, unless involved in attacks on domestic animals. In Zone B, more-liberal taking regulations would allow wolves to be killed to protect domestic animals under a much broader set of circumstances. However, neither the Zone A nor the Zone B regulations can be implemented while Minnesota gray wolves are federally listed as a threatened species.

When our July 13, 2000, proposed rule was being written, the Minnesota Legislature had not passed wolf management legislation, so we had little basis on which to evaluate the management and protection that Minnesota wolves would receive if we would remove their Federal protection. Therefore, we did not propose any change in Federal protection at that time. Because this final rule retains the Federal threatened listing and the associated protection for Minnesota gray wolves, and thus precludes the implementation of the MN Plan, we have not included a detailed review of the MN Plan in this rule. In the future, if and when we propose a change to the Federal protection of Minnesota gray wolves, we will evaluate and discuss the resulting affects of implementing the MN Plan in that proposed rule.

The complete text of the Wisconsin, Michigan, and Minnesota wolf management plans, as well as our summaries of those plans, can be found on our Web site (*see* **FOR FURTHER INFORMATION CONTACT**).

On the basis of discussions and written communications with Native American tribes and organizations prior to our proposal, and further supported by the comments we received from those sources during the comment period, we expect wolf populations to continue to be conserved on most, and probably all, Native American reservations in the western Great Lakes area. Those practices will augment the wolf population goals described above for the State DNRs. While we are unable to perform a comprehensive analysis of the likely future management and protection afforded to wolves on Native American reservations, we believe their traditional respect for the wolf, and its importance in Native American culture, will secure the species' future existence on most land under Native American control. At the time we consider initiating work on a proposal to delist or otherwise further reduce the Federal protection of gray wolves, we will again consult with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans and preferences.

The wolf retains great cultural significance and traditional value to many tribes and their members (Eli Hunt, Leech Lake Tribal Council, *in litt.* 1998; Mike Schrage, Fond du Lac Resource Management Division, *in litt.* 1998a). Some Native Americans view wolves as competitors for deer and moose, while others are interested in the harvest of the wolf as a furbearer (Schrage, *in litt.* 1998a). Many tribes intend to manage their natural resources, wolves among them, in a sustainable manner in order that they be available to their descendants. However, traditional natural resource harvest practices often include only a minimum amount of regulation by the tribal government (Hunt *in litt.* 1998).

In order to retain and strengthen these cultural connections, some tribes are opposed to the unnecessary killing of wolves on reservations and on ceded lands, even if wolves were to be delisted in the future. For example, because of the strong cultural significance of the wolf to their culture, the Ojibwa people support its protection (James Schlender, Great Lakes Indian Fish and Wildlife Commission, *in litt.* 1998). Additionally, the Tribal Council of the Leech Lake Band of Minnesota Ojibwe recently has adopted a resolution that describes the sport and recreational harvest of gray wolves as an inappropriate use of the animal. The resolution supports the limited harvest of wolves to be used for traditional or spiritual purposes by enrolled tribal members. This limited harvest would only be allowed by the tribe if it does not negatively affect the wolf population. Based on the Council's request, we will assist the Council with obtaining wolf pelts and parts that become available from other sources, such as depredation control activities. The Leech Lake Reservation is home to an estimated 75 to 100 gray wolves, the largest population of wolves on a Native American reservation in the 48 conterminous States (Hunt *in litt.* 1998).

The Red Lake Band of Chippewa Indians (Minnesota) has indicated that it is likely to develop a wolf management plan that will probably be very similar in scope and content to the plan developed by the MN DNR. The Band's position on wolf management is ''wolf preservation through effective management,'' and the Band is confident that wolves will continue to thrive on their lands (Lawrence Bedeau, Red Lake Band of Chippewa Indians, *in litt.* 1998).

The Keweenaw Bay Indian Community (Michigan) has at least one wolf pack of four animals on its lands. They will continue to list the gray wolf as a protected animal under the Tribal Code even if federally delisted, with hunting and trapping prohibited (Mike Donofrio, Biological Services, Keweenaw Bay Indian Community, pers. comm. 1998). Other tribes, such as the Fond du Lac Band of Lake Superior Chippewa, have requested a slower pace to any wolf delisting process to allow more time for the preparation of tribal wolf management plans. The Fond du Lac Band has passed a resolution opposing Federal delisting and any other measure that would permit trapping, hunting, or poisoning of the gray wolf (Schrage *in litt.* 1998b).

Several Midwestern tribes (*e.g.*, the Bad River Band of Lake Superior Chippewa Indians and the Little Traverse Bay Bands of Odawa Indians) have expressed concern regarding the possibility of the reclassification (and a potential future delisting) resulting in increased mortality of gray wolves on reservation lands, in the areas immediately surrounding the reservations, and in lands ceded by treaty to the Federal government by the tribes (Kiogama *in litt.* 2000). Interest has also been expressed in having our assistance in developing tribal and intertribal wolf management plans prior to delisting.

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) has Stated its intent to work closely with the States to cooperatively manage wolves in the ceded territories in the Upper Midwest, and will not develop a separate wolf management plan. The Commission intends to work with us to ensure that State plans will adequately protect the wolf (Schlender *in litt.* 1998).

The tribes are very concerned with the details of any change in Federal

protection for the gray wolf. However, the GLIFWC's Voigt Task Force, representing the off-reservation treaty-reserved fish, wildlife, and gathering rights of 11 tribes in the Midwest, supports the reclassification to threatened status and the accompanying increased flexibility provided by the special regulation that will now apply to the growing wolf populations in Michigan and Wisconsin. Although few if any tribes are likely to take depredating wolves under the new regulations, they appreciate being granted these authorities (Schlender *in litt.* 2000).

The lands of national forests, and the prey species found in their various habitats, are important to wolf conservation and recovery in the western Great Lakes States. There are six national forests in that area that have resident wolves. Their wolf populations range from 3 on the Nicolet National Forest in northeastern Wisconsin to an estimated 300–400 on the Superior National Forest in northeastern Minnesota. The land base of the Chequamegon National Forest currently is used by nearly half of the wolves in Wisconsin. All of these national forests are operated in conformance with standards and guidelines in their management plans that follow the recommendations of the 1992 Recovery Plan for the Eastern Timber Wolf (Service 1992a). Reclassification to threatened status is not expected to change these standards and guidelines; in fact, the gray wolf is expected to remain classified as a sensitive species by the Regional Forester for U.S. Forest Service Region 9 at least for 5 years even after Federal delisting (Steve Mighton, U.S. Forest Service, pers. comm. 1998). This continuation of current national forest management practices will be an important factor in ensuring the long-term viability of gray wolf populations in Minnesota, Wisconsin, and Michigan.

Gray wolves regularly use four units of the National Park System in the western Great Lakes States and may occasionally use three or four other units. Although the National Park Service (NPS) has participated in the development of some of the State wolf management plans in this area, NPS is not bound by those plans. Instead, the NPS Organic Act and the NPS Management Policy on Wildlife give the agency a separate responsibility to conserve natural and cultural resources and the wildlife present within the parks. National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, so management emphasis will continue to minimize the human impacts on wolf populations. Thus, because of their responsibility to preserve all wildlife, units of the National Park System can be more protective of wildlife than are State plans and regulations. In the case of the gray wolf, the NPS Organic Act and NPS policies will continue to provide protection to the wolf even after Federal delisting has occurred.

Voyageurs National Park, along Minnesota's northern border, has a land base of nearly 882 sq km (340 sq mi). Unpublished data from a 4-year wolf study indicate that there are a minimum of 6 to 9 packs that have at least a portion of their territory within the park. Management and protection of wolves within the park is not expected to change significantly after they are reclassified to threatened or even if delisted. Temporary closures around wolf denning and rendezvous sites will be enacted whenever they are discovered in Voyageurs National Park to reduce human disturbance. Sport harvest of wolves within the park will be prohibited, regardless of what may be allowed beyond park boundaries in future years. If there is a need to control depredating wolves (unlikely due to the current absence of agricultural activities adjacent to the park) the park will work with the State to conduct control activities outside the park to resolve the problem (Barbara West, Voyageurs National Park, *in litt.* 1999).

The wolf population in Isle Royale National Park is described above (see the *Recovery Progress of the Eastern Gray Wolf* section above). The NPS has indicated that it will continue to closely monitor and study these wolves, but at this time it does not plan to take any special measures to ensure their continued existence, regardless of their status under the Act. This wolf population is very small and isolated from the remainder of the western Great Lakes population; it is not considered to be significant to the recovery or long-term viability of the gray wolf (Service 1992a).

Two other units of the National Park System-Pictured Rocks National Lakeshore and St. Croix National Scenic Riverway—are regularly used by wolf packs. Pictured Rocks National Lakeshore is a narrow strip of land along Michigan's Lake Superior Shoreline; it contains wolves during the nonwinter months when deer populations are high. The Lakeshore intends to protect denning and rendezvous sites at least as strictly as the MI DNR Plan recommends (Brian Kenner, Pictured Rocks National Lakeshore, *in litt.* 1998). The St. Croix National Scenic Riverway, in Wisconsin and Minnesota, is also a mostly linear ownership, and it makes up portions of the territories of 3 to 5 packs of 10 to 40 wolves. The Riverway is likely to limit public access to denning and rendezvous sites, and to follow other management and protective practices outlined in the respective State wolf management plans (Robin Maercklein, St. Croix National Scenic Riverway, *in litt.* 1998).

In the western Great Lakes area, we currently manage seven units within the National Wildlife Refuge System with wolf activity. Primary among these are Agassiz National Wildlife Refuge (NWR) and Tamarac NWR in Minnesota, as well as Seney NWR in the Upper Peninsula of Michigan. Agassiz NWR has had as many as 20 wolves in 2 or 3 packs in recent years. Mange and illegal shootings reduced them to 5 wolves in a single pack and a separate single wolf in 1999, but in 2001, 2 packs with an estimated 11 members were using the refuge. Tamarac NWR has 2 packs, with approximately 18 wolves, using that refuge. Seney NWR currently has two packs, with a total of 4 wolves in the packs, plus several lone wolves also frequenting the refuge. Rice Lake NWR, in Minnesota, had 1 or 2 packs using the refuge in 2001. Late in the winter of 1998–99 a pair of gray wolves were located on Necedah NWR. By winter 2001–2002, there were 2 packs on the Refuge, with a total of at least 7 wolves in the packs. Sherburne NWR and Crane Meadows NWR, also in Minnesota, each have several individual wolves, but probably lack established wolf packs.

Gray wolves occurring on National Wildlife Refuges in the western Great Lakes States will be monitored, and refuge habitat management actions will maintain the current prey base for them while they are listed as threatened, and for a minimum of 5 years following any future delisting. Trapping or hunting by government trappers in response to depredation complaints will not be authorized on these refuges. However, because of the relatively small size of these NWRs, most, perhaps all, of these packs and individual wolves spend significant amounts of time off of these NWRs.

The extra protection afforded to resident and transient wolves, their den and rendezvous sites, and their prey by six national forests, two National Parks, and numerous National Wildlife Refuges in Minnesota, Wisconsin, and Michigan will further ensure the continuing recovery of wolves in the three States.

In summary, we believe that habitat or range destruction or degradation, or related factors that may affect gray wolf numbers, do not by themselves or in combination with other factors place the Eastern DPS of the gray wolf in danger of extinction. Recovery efforts over the past decade, as well as State, tribal, and Federal land management agency wolf management plans and practices will provide adequate protection for wolf populations, maintain their prey base, preserve denning sites and dispersal corridors, and are likely to keep wolf populations well above the numerical recovery criteria established in the Federal Recovery Plan for the Eastern Timber Wolf (Service 1992a).

Western DPS. The Recovery Plan (Service 1987) and the EIS for wolf reintroduction into Yellowstone and central Idaho (Service 1994a) recommended that wolf recovery efforts in the northern U.S. Rocky Mountains focus on areas that contained large blocks of public land, abundant wild ungulates, and minimal livestock to cause potential conflicts between people and wolves. Three primary recovery areas were identified: northwestern Montana, central Idaho, and the Greater Yellowstone Area (Service 1987). The northwestern Montana recovery area (more than 50,000 sq km (19,200 sq mi) is the area north of Interstate 90 and west of Interstate 15, and is a mixture of public land, primarily administrated by the USDA Forest Service, and private land. The economy and local culture is diverse and not as agriculturally based as in other parts of Montana (Bangs *et al.* 1995). The Greater Yellowstone Area and central Idaho areas, 64,000 sq km (24,600 sq mi) and 53,900 sq km (20,700 sq mi) respectively, are primarily composed of public lands (Service 1994a). These areas of potential wolf habitat are secure, and no foreseeable habitat-related threats prevent them from supporting a wolf population that exceeds recovery levels. There is already a demonstrated connectivity between occupied wolf habitat in Canada, northwestern Montana, Idaho, and Wyoming to ensure routine interchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the wolf metapopulation. To date, natural connectivity between Idaho and northwestern Montana into the Greater Yellowstone Area appears to be more limited than that between Canada, northwestern Montana, and Idaho, but it does not appear to be a significant issue that would threaten wolf population viability in the Yellowstone segment of the northern Rocky Mountain wolf population. In addition, management actions have relocated about 120 wolves in and between Montana, Idaho, and Wyoming, including relocations between the various recovery areas. Wolf relocations will be used less often at higher wolf population levels because much of the most suitable wolf habitat is already occupied by resident wolf packs, but it will still occur and can further lessen the probability that genetic isolation could impact wolf population viability.

Wild ungulate populations in these three areas are composed mainly of elk, white-tailed deer, mule deer, moose, and (only in the Greater Yellowstone Area) bison. The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintain them at densities that would support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population. While 100,000 to 250,000 wild ungulates are estimated in each State, domestic ungulates, primarily cattle and sheep, are typically at least twice as numerous even on public lands (Service 1994a). The only areas large enough to support wolf packs, but lacking livestock grazing, are Yellowstone National Park and some adjacent USDA Forest Service Wilderness and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle. While there is no livestock grazing in Glacier National Park, every wolf pack in northwestern Montana has interacted with some livestock, primarily cattle. Conflict between wolves and livestock has resulted in the annual removal of less than 6 percent of the wolf population (Bangs *et al.* 1995, Service *et al.* 2002). This level of removal by itself is not believed to cause declines in wolf populations.

In summary, we do not believe that habitat loss or deterioration, habitat fragmentation, or a decline in the abundance of wild prey will occur at levels that will affect wolf recovery and long-term population viability in the Western DPS.

Southwestern DPS. Sufficient suitable habitat exists in the Southwestern United States to support current recovery plan objectives for the Southwestern (Mexican) gray wolf. These habitats occur primarily on national forests and Native American reservations. Current and reasonably foreseeable management practices on these areas are expected to support ungulate populations at levels that will sustain wolf populations which meet or exceed recovery plan objectives. Habitat destruction or modification is not currently considered a threat or deterrent for restoration of Southwestern (Mexican) gray wolves.

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

General. Since their listing under the Act, no gray wolves have been legally killed or removed from the wild in the conterminous 48 States for either commercial or recreational purposes. We acknowledge that some wolves may have been illegally killed for commercial use of the pelts and other parts, but illegal commercial trafficking in wolf pelts or wolf parts is believed to be rare. Illegal capture of wolves for commercial breeding purposes is also possible, but is believed to be rare. The large fines and prison sentences provided for by the Act for criminal violations are believed to substantially discourage and minimize the illegal killing of wolves for commercial or recreational purposes. These penalties will remain following the reclassification to threatened status, although the maximum fines and prison sentences are reduced to $25,000 and 6 months for the wolves reclassified to threatened.

The intentional or incidental killing, or capture and permanent confinement, of endangered or threatened gray wolves for scientific purposes can only legally occur under permits issued by us (for example, under section 10(a)(1)(A) and 10(a)(1)(B) of the Act), under an incidental take statement issued by us as part of a biological opinion evaluating the effects of an action by a Federal agency, under an incidental take permit issued by us pursuant to section 10(a)(1)(B), or by a State agency operating under a cooperative agreement with us pursuant to section 6 of the Act (50 CFR 17.21(c)(5) and 17.31(b)). Although exact figures are not available rangewide, such removals of wolves from the wild have been very limited and probably comprised an average of fewer than 2 animals per year since the species was first listed as endangered. These animals were either taken from the Minnesota wolf population during long-term research activities (about 15 gray wolves); were accidental takings as a result of research activities in Wisconsin (4–5 mortalities and 1 long-term confinement); were accidentally killed during routine capture, monitoring, and research efforts in Montana, Idaho, Wyoming, or Arizona (fewer than 6 wolves); were

removed from the endangered population in Mexico (5 wolves) to be used as breeding stock for reintroduction programs in the United States; or were previously released *Canis lupus baileyi* that were recaptured for probable permanent confinement after being judged unsuitable for the reintroduction program (9 wolves) (William Berg, MN DNR, *in litt.* 1998; Mech, *in litt.* 1998; Brian T. Kelly, U.S. Fish and Wildlife Service pers. comm. 2002; Wydeven 1998).

We believe that no wolves have been legally removed from the wild for educational purposes in recent years. Wolves that are used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons.

Refer to the *Depredation Control Programs in the Midwestern States* and *Depredation Control Programs in the Western DPS* sections under the *Summary of Factors Affecting the Species* section, factor D. *The adequacy or inadequacy of existing regulatory mechanisms,* below, for discussions of additional wolf mortalities associated with wolf depredation control programs.

Eastern DPS. The taking of gray wolves that are now classified as threatened for commercial, recreational, scientific, or educational purposes remains generally prohibited under the Act, but can be authorized by Federal permit. In addition, the taking of threatened wolves for conservation purposes can be done without an authorizing permit, if that taking is done by an employee or agent of a State conservation agency having an approved conservation agreement under the provisions of section 6(c) of the Act. The wildlife management agencies of the States of Minnesota, Wisconsin, Michigan, North Dakota, and South Dakota each have such an approved conservation agreement, and therefore will be able to take gray wolves for conservation purposes. The amount of such take must be reported to us annually.

This reclassification to threatened status for the Eastern DPS will not result in any decrease in protection for gray wolves in Minnesota, because they already are classified as threatened there. Therefore, there will be no increase in the taking of Minnesota wolves for these purposes. The extremely small current level of such take has not affected the recovery of Minnesota wolves, and is not expected to do so in the future.

Gray wolves in Wisconsin, Michigan, North Dakota, South Dakota and any other State where they may occur in the Eastern DPS are now subject to a possible increase in take, due to this reclassification, by employees or agents of these States. However, this take must be for conservation purposes, and is thus likely to be either for research purposes or part of a wolf depredation control program. (Depredation control programs, and the take expected to result from them under the new section 4(d) special regulation that now applies to parts of the Eastern DPS, are discussed in the *Depredation Control Programs in the Midwestern States* section under the *Summary of Factors Affecting the Species* section, factor D, *The adequacy or inadequacy of existing regulatory mechanisms,* below.) Therefore, we believe that such take will be minimal and that exempting such take is consistent with the recovery of the wolf in the Eastern DPS. To date, there has been no take of wolves for conservation purposes in, and we do not anticipate such take unless one or more packs becomes established in, the Dakotas or other States within this DPS, except for Minnesota, Wisconsin, and Michigan. Existing regulations require that the take must be for conservation purposes, and must be consistent with gray wolf recovery.

In summary, the taking of wolves by tribes, Federal agencies, organizations, or private citizens for commercial, recreational, scientific, or educational purposes may increase slightly, because the Act allows us to issue take permits for zoological exhibition, educational purposes, and ''special purposes consistent with the Act'' for threatened but not for endangered wildlife. However, the requirement that such take must be consistent with the conservation of the threatened species means that the magnitude of the take will be small and cannot inhibit gray wolf recovery. In addition, any additional take, under the new 4(d) regulation, of threatened wolves by State conservation agency employees must be for scientific research or conservation programs, and therefore must be consistent with continued wolf recovery.

Western DPS. Since western gray wolves were listed as endangered and experimental, no legal commercial, recreational, or educational utilization or take of them has occurred. In the States where wolves are now reclassified to threatened status and are now covered by the new 4(d) special regulation, no legal take would be allowed for these purposes under the threatened classification or under the new special regulation.

We believe some wolf mortalities associated with the ongoing scientific studies of wolves will continue to occur. Some of these studies involve capturing and radio-collaring wolves. Wolf capture by trapping, helicopter netgunning, and darting has the potential to seriously injure or kill wolves. Rare, these unintentional mortalities generally average less than 2 percent of the wolves handled (Service 1994a). During the reintroduction of wolves from Canada, nearly 100 wolves were handled and 2 died. Since then, there have been fewer than 6 wolf mortalities out of over 400 wolves captured as part of routine trapping and radio-collaring for monitoring purposes in Montana, Idaho, and Wyoming.

Southwestern DPS. In Arizona, New Mexico, the southern half of Utah and Colorado, the western half of Oklahoma and Texas, and Mexico, gray wolves continue to be protected by section 9 of the Act under their endangered or nonessential experimental population classifications. These classifications prohibit any commercial or recreational take of gray wolves, and we are unaware of any such take of southwestern wolves since their reintroduction. Enforcement by us will continue to keep such take to minimal levels.

Take for scientific or recovery purposes, including educational purposes, will be available in these States, but such take can be authorized only by a permit from us, and it must promote the conservation of the species. Thus, in all cases, gray wolf take for scientific, educational, and conservation purposes must benefit the gray wolf and must promote its recovery. Therefore, any take of this nature will not negatively impact continuing wolf recovery.

We do not believe that these forms of intentional take comprise a threat to the southwestern gray wolves, nor will they significantly impede recovery progress.

C. Disease or Predation

Disease. Many diseases and parasites have been reported for the gray wolf, and several of them have had significant impacts during the recovery of the species in the 48 conterminous States (Brand *et al.* 1995). These diseases and parasites, and perhaps others, must be considered to be significant potential threats to gray wolf populations in the future. Thus, in order to avoid a disease/parasite-related decline in the gray wolf population, their presence and impacts require diligent monitoring and appropriate follow-up for the foreseeable future.

Eastern DPS. Canine parvovirus (CPV) is a relatively new disease that infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. Recognized in the United States in 1977 in domestic dogs,

it appeared in Minnesota wolves (based upon retrospective serologic evidence) live-trapped as early as 1977 (Mech *et al.* 1986). However, Minnesota wolves may have been exposed to the virus as early as 1973 (Mech and Goyal 1995). Serologic evidence of gray wolf exposure to CPV peaked at 95 percent of a group of Minnesota wolves live-trapped in 1989 (Mech and Goyal 1993). In a captive colony of Minnesota wolves, pup and yearling mortality from CPV was 92 percent of the animals that showed indications of active CPV infections in 1983 (Mech and Fritts 1987), demonstrating the substantial impacts this disease can have on young wolves. It is believed that the population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999a).

There is no evidence that CPV has caused a population decline or has had a significant impact on the recovery of the Minnesota gray wolf population. However, Mech and Goyal (1995) found that high CPV prevalence in the wolves of the Superior National Forest in Minnesota occurred during the same years in which wolf pup numbers were low. Because the wolf population did not decline during the study period, they concluded that CPV-caused pup mortality was compensatory, that is, it replaced deaths that would have occurred from other causes, especially starvation of pups. They theorized that CPV prevalence affects the amount of population increase, and that a wolf population will decline when 76 percent of the adult wolves consistently test positive for CPV exposure. Their data indicate that CPV prevalence in adult wolves in their study area increased by an annual average of 4 percent during 1979–93 and was at least 80 percent during the last 5 years of their study (Mech and Goyal 1995). Additional unpublished data gathered since 1995 indicate that CPV reduced wolf population growth in that area from 1979 to 1989, but not since that period (Mech *in litt.* 1999). These data provide strong justification for continuing population and disease monitoring.

The disease probably stalled wolf population growth in Wisconsin during the early and mid-1980s. During those years, the Wisconsin wolf population declined or was static, and 75 percent of 32 wolves tested by the same method were positive for CPV. During the following years (1988–96) of population increase, only 35 percent of the 63 wolves tested positive for CPV (WI DNR 1999a. CPV exposure rates were at 50 percent in live-captured Wisconsin wolves in 1995–96 (WI DNR 1999a, but no necropsy evidence of CPV mortalities from Wisconsin wolves exists (Nancy Thomas, National Wildlife Health Laboratory, *in litt.* 1998). Of 13 Wisconsin wolves that died and were examined in 2000, none of the deaths were attributed to CPV (Wydeven *et al.* 2001a). Similarly, CPV is not a suspected cause of death for the 22 wolves with a suspected cause of death identified in 2001 (WI DNR unpublished data). However, the difficulty of discovering CPV-killed pups must be considered.

Canine parvovirus is considered to have been a major cause of the decline of the isolated Isle Royale, Michigan, population in the mid and late 1980s. The Isle Royale gray wolf population decreased from 23 and 24 wolves in 1983 and 1984, respectively, to 12 and 11 wolves in 1988 and 1989, respectively. The wolf population remained in the low to mid-teens through 1995. However, factors other than disease may be causing, or contributing to, a low level of reproductive success, including a low level of genetic diversity and a prey population composed of young healthy moose that may make it difficult to secure sufficient prey for pups. There are no data showing any CPV-caused population impacts to the larger gray wolf population on the Upper Peninsula of Michigan (Peterson *et al.* 1998, Hammill pers. comm. 2002).

Sarcoptic mange is caused by a mite infection of the skin. The irritation caused by the feeding and burrowing mites results in scratching and then severe fur loss, which in turn can lead to mortality from exposure during severe winter weather.

From 1991 to 1996, 27 percent of live-trapped Wisconsin wolves exhibited symptoms of mange. During the winter of 1992–93, 58 percent showed symptoms, and a concurrent decline in the Wisconsin wolf population was attributed to mange-induced mortality (WI DNR 1999a). Seven Wisconsin wolves died of mange from 1993 through October 15, 1998, and severe fur loss affected five other wolves that died from other causes. During that period, mange was the third largest cause of death in Wisconsin wolves, behind trauma (usually vehicle collisions) and shooting (Nancy Thomas *in litt.* 1998).

The prevalence of mange and its impacts on the wolf population have increased in Wisconsin. During the 12-month period from April 2000 through March of 2001, mange appeared to be the second-most common cause of mortality in 23 Wisconsin wolves that were found dead; mange-induced hypothermia caused the death of 4 wolves and contributed to the death of a fifth wolf. (Motor vehicle collisions caused the death of 10 Wisconsin wolves during this same period, while 2 were shot and 2 were killed by other wolves.) Wolves nearing death from mange generally crawl into dense cover and are difficult to discover if they are not radio-tracked. During the winter of 2000–2001, approximately 14 percent of the radio-collared wolves being tracked by WI DNR died from mange. Other observations showed that some mangy wolves are able to survive the winter (Wydeven *et al.* 2000b, 2001a).

Pup survival during their first winter is believed to be strongly affected by mange. However, estimated survival of Wisconsin pups from 2000 until late winter 2000–2001 was 28 percent, only slightly lower than the previous year's 31 percent pup survival, yet the State's wolf population increased by 21 percent from 1999 to 2000 and only 4 percent from 2000 to 2001 (Wydeven *et al.* 2000a, 2001a). This indicates that mange mortality may not be the primary determinant of wolf population growth in the State, yet the impacts of mange in Wisconsin need to be closely monitored. So far, mange has not caused a sustained decline in the State's wolf population, and the wolf population increased by about 26 percent from late winter 2000–2001 to 2001–2002 despite the continued prevalence of mange in Wisconsin wolves (Wydeven *et al.* 2002).

In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995). At least 7 wild Michigan wolves died from mange during 1993–97, making it the most common disease of Michigan wolves. From 1999–2001, mange-induced hypothermia was the cause of death for all 7 Michigan wolves whose cause of death was attributed to disease (Hammill *in litt.* 2002). The Michigan Wolf Management Plan acknowledges that mange may be slowing wolf population growth and specifies that captured wolves be treated with Ivermectin to combat the mites (MI DNR 1997). MI DNR currently treats all captured wolves with Ivermectin if they show signs of mange. In addition, MI DNR vaccinates all captured wolves against CPV and canine distemper virus (CDV), and administers antibiotics to combat potential leptospirosis infections.

Wisconsin wolves similarly had been treated with Ivermectin and vaccinated for CPV and CDV when captured, but

the practice was stopped in 1995 to allow the wolf population to experience more natural biotic conditions. Since that time, Ivermectin has been administered only to captured wolves with severe cases of mange. In the future, Ivermectin and vaccines will be used sparingly on Wisconsin wolves, but will be used to counter significant disease outbreaks (Wydeven *in litt.* 1998).

Mange has not been documented to be a significant disease problem in Minnesota. Several packs in the Ely and Park Rapids areas are known to suffer from mange, and a pack at Agassiz NWR in northwestern Minnesota was reduced from at least five wolves (the pack may have numbered six to eight in the early 1990s) to a single animal over the last few years, primarily resulting from mange.

Lyme disease, caused by a spirochete, is another relatively recently recognized disease, first documented in New England in 1975; it may have occurred in Wisconsin as early as 1969. It is spread by ticks, that pass along the infection to their various hosts during feeding episodes. Host species include humans, horses, dogs, white-tailed deer, white-footed mice, eastern chipmunks, coyotes, and wolves. The prevalence of Lyme disease in Wisconsin wolves averaged 70 percent of live-trapped animals in 1988–91, but dropped to 37 percent during 1992–97. While there are no data showing wolf mortalities from Lyme disease, it may be suppressing population growth through decreased wolf pup survival. Lyme disease has not been reported from wolves beyond the Great Lakes regions (WI DNR 1999a).

Other diseases and parasites, including rabies, canine distemper, canine heartworm, blastomycosis, brucellosis, leptospirosis, bovine tuberculosis, hookworm, dog lice, coccidiosis, and canine hepatitis, have been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, Johnson 1995, Mech and Kurtz 1999, Thomas *in litt.* 1998, WI DNR 1999a). However, continuing wolf range expansion likely will provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, and bovine tuberculosis (Thomas *in litt.* 2000), further emphasizing the need for vigilant disease monitoring programs.

In aggregate, diseases and parasites were the cause of 25 percent of the diagnosed wolf deaths from 1960 through 1997 in Michigan (MI DNR 1997) and 19 percent of the diagnosed mortalities of radio-collared wolves in Wisconsin from 1979 through 1998 (Wydeven 1998).

Since several of the diseases and parasites are known to be spread by wolf to wolf contact, their incidence may increase as wolf densities increase in newly colonized areas. However, because wolf densities generally are relatively stable following the first few years of colonization, wolf to wolf contacts will not likely lead to a continuing increase in disease prevalence (Mech *in litt.* 1998).

Disease and parasite impacts may increase because several wolf diseases are carried and spread by domestic dogs. This transfer of diseases and parasites from domestic dogs to wild wolves may increase as gray wolves continue to colonize non-wilderness areas (Mech *in litt.* 1998). Heartworm, CPV, and rabies are the main concerns (Thomas *in litt.* 1998).

Disease and parasite impacts are a recognized concern of the State DNRs. The Michigan Gray Wolf Recovery and Management Plan states that necropsies will be conducted on all dead wolves, and that all live wolves that are handled will be examined, with blood, skin, and fecal samples taken to provide disease information. All handled wolves will be vaccinated for CDV and CPV and treated for parasites before release (MI DNR 1997).

Similarly, the Wisconsin Wolf Management Plan has a section on wolf health monitoring. It states that as long as the wolf is State listed as a threatened or endangered species, the WI DNR will conduct necropsies of dead wolves and test a sample of live-captured wolves for diseases and parasites. The goal will be to capture and screen 10 percent of the State wolf population for diseases annually. Following State delisting (after the State wolf population grows to 250 animals), disease monitoring will be scaled back because the percentage of the wolf population that is live-trapped each year will decline, but periodic necropsy and scat analyses will continue to test for disease and parasite loads. The plan also recommends that all wolves live-trapped for other studies should have their health monitored and reported to the WI DNR wildlife health specialists (WI DNR 1999a).

In summary, several diseases have had significant impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s, and it has been implicated as a contributing factor in declines of the isolated Isle Royale population in Michigan. Sarcoptic mange has impacted wolf recovery in both Michigan's Upper Peninsula and in Wisconsin in this decade, and is recognized as a continuing problem. However, despite these and other diseases and parasites, the overall trend for wolf populations in the western Great Lakes States is upward. The wolf management plans of Minnesota, Michigan, and Wisconsin include monitoring components that are expected to identify future disease and parasite problems in time to allow corrective action to be taken to avoid a significant decline in overall population viability. We do not believe disease impacts will prevent the continuation of wolf recovery in these States. The reclassification of Wisconsin and Michigan wolves from endangered to threatened will not change the incidence or impacts of disease on these wolves.

Western DPS. Wolves in the northern U.S. Rocky Mountains are exposed to a wide variety of canid diseases, common throughout North America. Some of these diseases and parasites have been documented to significantly affect wolf populations, usually temporarily, in other areas of North America. To date, canine parvovirus, canine distemper, and mange have been documented in wolves from the northern Rocky Mountains. Wolves in the Yellowstone area have almost certainly been exposed to brucellosis. However, in the studies of wolves in Montana, Idaho, and Wyoming to date, disease and parasites have not appeared to be a significant factor affecting wolf population dynamics. Just like wolves in all other parts of North America, wolves, usually pups, in the northern Rocky Mountains will occasionally die from a wide variety of canid diseases. However, it is doubtful that wolf populations in the northern Rocky Mountains could be significantly impacted, because wolf exposure to these diseases has been occurring for decades. The EIS on gray wolf reintroduction identified disease impact as an issue but did not evaluate it further, because it appeared not to be significant (Service 1994a). Likewise, in the ''Wolves for Yellowstone?'' reports to Congress in 1992, Johnson (1992a and 1992b) reviewed the relationship between wolves and rabies, brucellosis, and tuberculosis and found canids were not likely to be a reservoir for those diseases.

Southwestern DPS. There is no evidence suggesting that disease was a significant factor in the decline of the Mexican wolf. Likewise, there is no

reason to believe that disease will be a significant impediment to recovery of the Mexican wolf in the wild. Because the potential for disease and parasite transmission is much greater in captivity, especially in zoos, all captive Mexican wolves are vaccinated or treated for potential canine diseases and parasites that may exist in the captive environment.

As a result of captive disease and parasite prevention and treatment protocols, released wolves are in good health and physical condition when they enter the wild. Re-established Southwestern (Mexican) wolves will be monitored for disease or parasite-related problems, and all wild wolves captured for monitoring or management purposes will continue to be vaccinated indefinitely. To date, three Mexican wolf pups born in the wild have died from canine parvovirus. These pups were recaptured due to their parents killing livestock, and the pups subsequently died in captivity. This appears to be a limited occurrence and may have been associated with the pups being captured and placed in captivity.

Predation. There are no wild animals that habitually prey on gray wolves. Occasionally wolves will be killed by large prey such as deer or moose (Mech and Nelson 1989) or by a competing predator such as a mountain lion, but this has only been documented on rare occasions and is not believed to be a significant mortality factor. However, humans are highly effective predators of gray wolves.

Eastern DPS. Wolves are killed by other wolves, most commonly when a dispersing wolf encounters another pack and is attacked as an intruder, or when two packs encounter each other along their common territorial boundary. This form of mortality is likely to increase as more of the available wolf habitat becomes saturated with wolf pack territories, as is the case in northeastern Minnesota. Over the period from October 1979 through June 1998, 7 (13 percent) of the diagnosed mortalities of radio-collared Wisconsin wolves resulted from wolves being killed by other wolves (Wydeven 1998). However, this behavior is a normal part of the species' behavioral repertoire and should not be a cause for concern in healthy wolf populations, as it normally indicates that the wolf population is at, or approaching, the carrying capacity of the area.

Humans have functioned as highly effective predators of the gray wolf. We attempted to eliminate them from the landscape in earlier times: the United States Congress passed a wolf bounty that covered the Northwest Territories in 1817. Bounties on wolves subsequently became the norm for States across the species' range. In Michigan, an 1838 wolf bounty became the ninth law passed by the First Michigan Legislature; this bounty remained in place until 1960. A Wisconsin bounty was instituted in 1865 and then repealed about the time wolves were extirpated from the State in 1957. Minnesota maintained a wolf bounty until 1965.

Subsequent to the gray wolf's listing as a federally endangered species, the Act and State endangered species statutes prohibited the killing of wolves except under extenuating circumstances, such as in defense of human life, for scientific or conservation purposes, or under several special regulations intended to reduce wolf depredations of livestock. This reduction in human-caused mortality is the main cause of the wolf's comeback in parts of its historical range. However, it is clear that illegal killing of wolves continues.

Illegal killing of wolves occurs for a number of reasons. Some of these killings are accidental (*e.g.,* wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals), and some of these accidental killings are reported to State, tribal, and Federal authorities. However, it is likely that most illegal wolf killings are intentional and are never reported to authorities. Such killings may be done because of frustration over wolf depredations of livestock or pets, fear for the safety of pets or children, hatred of the species, opposition to wolf recovery, a desire to protest against the government, or for other reasons. The number of illegal killings is difficult to estimate and impossible to accurately determine, because they generally occur in isolated areas and the evidence is quickly concealed.

Two Minnesota studies provide insight into the extent of human-caused wolf mortality before and after the species' listing. On the basis of bounty data from a period that predated wolf protection under the Act by 20 years, Stenlund (1955) found an annual human-caused mortality rate of 41 percent. Fuller (1989) provided 1980–86 data from a north-central Minnesota study area and found an annual human-caused mortality rate of 29 percent, a figure which includes 2 percent mortality from legal depredation control actions. However, drawing conclusions from these two data sets is difficult due to the confounding effects of habitat quality, exposure to humans, prey density, differing time periods, and vast differences in study design. While these figures provide support for the contention that human-caused mortality decreased subsequent to the wolf's protection under the Act, it is not possible at this time to determine if human-caused mortality (apart from mortalities from depredation control) has significantly changed over the 25-year period that the gray wolf has been listed as threatened or endangered.

Interestingly, when compared to his 1985 survey, Kellert's 1999 public attitudes survey showed an overall increase in the number of northern Minnesota residents who reported having killed, or knowing someone who had killed, a wolf. However, members of groups that are more likely to encounter wolves-farmers, hunters, and trappers-reported a decrease in the number of such incidents (Kellert 1985, 1999). Because of these apparently conflicting results, and differences in the methodology of the two surveys, drawing any clear conclusions on this issue is difficult.

It is important to note that despite the difficulty in measuring the extent of illegal killing of wolves, their population and range in the western Great Lakes States has continued to increase. During recent decades, all sources of wolf mortality, including legal (takings for research and depredation control activities) and illegal human-caused mortality, have not been of sufficient magnitude to stop the continuing growth of the wolf population, estimated at about 4 percent average annual increase in Minnesota, and about a 28 percent average annual increase in Wisconsin and Michigan since 1992–1993. This indicates that total gray wolf mortality continues to be exceeded by wolf recruitment (that is, reproduction and immigration) in these areas.

As the wolf population in Wisconsin and Michigan saturates the habitat or as the cultural carrying capacity is approached, the rapid population growth rates are expected to slow, and it is likely that growth will eventually stop. (''Cultural carrying capacity'' differs from the biological or habitat carrying capacity in that it also incorporates the limits that will likely be imposed on the wolf population by human society, including both legal and illegal limiting measures.) At that time we should expect to see negative growth rates (that is, wolf population declines) in some years, due to short-term fluctuations in birth and mortality rates. However, adequate wolf monitoring programs, as identified in the Michigan, Wisconsin, and Minnesota wolf management plans, should be able to identify excessively high mortality rates

and/or low birth rates and to trigger timely corrective action when necessary. Michigan and Wisconsin DNRs are currently monitoring their wolf populations in this manner, and this level of monitoring will continue following this reclassification. The goals of all three State wolf management plans are to maintain a within-State wolf population that is well above the 200 animals identified in the Federal Eastern Recovery Plan as needed for viable isolated wolf populations.

In Wisconsin, human-caused mortalities accounted for 58 percent of the diagnosed mortalities on radio-collared wolves from October 1979 through June 1998. One-third of all the diagnosed mortalities, and 55 percent of the human-caused mortalities, were from shooting. Another 12 percent of all the diagnosed mortalities resulted from vehicle collisions. Vehicle collisions have increased as a percentage of radio-collared wolf mortalities. During the October 1979 through June 1995 period, only 1 of 27 known mortalities was from that cause; but from July 1995 through June 1998, 5 of the 26 known mortalities resulted from vehicle collisions (WI DNR 1999a, Wydeven 1998); and from April 2000 through March 2001, 10 of 23 known mortalities were from that cause (Wydeven *et al.* 2000b, 2001a). Only 2 of those 23 mortalities were from shootings, but an additional 4 Wisconsin wolves were shot during the State's 2001 deer hunting season (WI DNR 2001).

In the Upper Peninsula of Michigan, human-caused mortalities accounted for 75 percent of the diagnosed mortalities, based upon 34 wolves recovered from 1960 to 1997. Twenty-eight percent of all the diagnosed mortalities and 38 percent of the human-caused mortalities were from shooting. In the Upper Peninsula during that period, about one-third of all the known mortalities were from vehicle collisions (MI DNR 1997). During the 1998 Michigan deer hunting season, 3 radio-collared wolves were shot and killed, resulting in one arrest and conviction (Hammill *in litt.* 1999, Michigan DNR 1999b). During the subsequent 3 years, 8 additional wolves were killed in Michigan by gunshot, and the cut-off radio-collar from a ninth animal was located, but the animal was never found. These incidents resulted in 6 guilty pleas, with 3 cases remaining open. Data from that 1999–2001 period show that human-caused mortalities still account for the vast majority of the diagnosed mortalities (79 percent) in Michigan. However, deaths from vehicular collisions now greatly outnumber shootings. Twenty-seven percent of the diagnosed mortalities were from shootings (35 percent of the human-caused mortalities), while 48 percent of the diagnosed Michigan mortalities were from vehicular collisions (Hammill *in litt.* 2002). When viewing these figures it is important to remember that there is a much greater likelihood of finding a vehicle-killed wolf than there is of finding a wolf that has been illegally shot, unless the animal was being radio-tracked.

A continuing increase in wolf mortalities from vehicle collisions, both in actual numbers and as a percent of total diagnosed mortalities, is expected as wolves continue their colonization of areas with more human developments and a denser network of roads and vehicle traffic.

A significant portion of the intentional illegal mortalities may arise as a protest against the Federal government or from frustration arising from a perception of inadequate Federal or State depredation control programs or inadequate State compensation for depredated livestock and dogs. The application of this final rule in the Midwest—reclassifying Wisconsin and Michigan wolves to threatened and implementing a special regulation for lethal depredation control, with no change in the nearly identical protection currently provided to threatened Minnesota wolves—is expected to have both positive and negative impacts on illegal wolf mortality.

In Wisconsin and Michigan, the rapidly expanding wolf population is beginning to cause more depredation problems. For example, from 1991 through 1996 only 1 Wisconsin wolf was captured for depredation control. In 1997, 2 wolves were trapped and moved to eliminate depredation problems. In 1998, 4 wolves had to be captured as a result of verified depredation problems, and 8 were trapped (7 moved) in the first 9 months of 2001 (Wydeven *et al.* 2001b) in response to verified depredation incidents. Data from Michigan show a similar, but smaller, increase in confirmed wolf depredations on calves, cows, sheep, and dogs: 2 in 1996, 3 in 1998, 4 in 1999, 3 in 2000, and 6 in 2001 (Hammill *in litt.* 2002).

For Wisconsin and Michigan, the new special management regulations under section 4(d) of the Act provide increased flexibility and efficiency in dealing with these problem wolves (see the *Special Regulations Under Section 4(d) for Threatened Species* section below). This may result in greater public satisfaction with the States' abilities to promptly and effectively deal with depredation incidents, and may reduce the perception that wolves are out of control. Thus, the regulations may counter the viewpoint that vigilante action is needed to reduce their numbers. Such vigilante action is likely to result in the death of nondepredating wolves, and may impede recovery progress, at least locally.

Wolves were largely eliminated from the Dakotas in the 1920s and 1930s and were rarely reported from the mid-1940s through the late 1970s. Ten wolves were killed in these two States from 1981 to 1992; 5 of the mortalities were in 1991 and 1992 (Licht and Fritts 1994). Two more were killed in North Dakota since 1992, and in Harding County in extreme northwestern South Dakota, a wolf was killed in 2001. There have been other recent reported sightings of gray wolves, including a confirmed sighting by USDA/APHIS-Wildlife Services personnel in 1996 near Gary, South Dakota, (near the Minnesota border), and a 1994 confirmation of a den with pups in extreme north-central North Dakota near the Canadian border. Several other unconfirmed sightings have been reported from extreme northeastern and southeastern South Dakota. Wolves killed in North and South Dakota are most often shot by hunters after being mistaken for coyotes, or else they are killed by vehicles. The 2001 mortality in South Dakota was caused by an M–44 ''coyote getter'' device that had been properly set in response to complaints about coyotes. Genetic analysis of the Harding County mortality showed it to be a wolf from the Minnesota-Wisconsin-Michigan area (Straughan and Fain 2002).

Additional discussion of past and future wolf mortalities in the Eastern DPS arising from depredation control actions is found under the *Summary of Factors Affecting the Species* section, factor D, *The inadequacy of existing regulatory mechanisms.*

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, it is clear that these wolf populations have continued to increase in both numbers and range. Under these new regulations, as long as other mortality factors do not increase significantly, and the wolf populations receive adequate and timely monitoring to document (and counteract, if necessary) the effects of excessive human-caused mortality, we believe the Minnesota and Wisconsin-Michigan wolf populations will not decline to nonviable levels, nor will recovery slow, in the foreseeable future resulting from human-caused killing or other forms of predation.

Western DPS. Since wolves have been monitored in Montana, Idaho, and Wyoming, only two wolves been confirmed to have been killed by

another predator. They were both lone wolves killed by mountain lions. Wolves in the northern Rocky Mountains inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves are occasionally killed by prey that they are attacking, but those instances are rare. Since 1987, wolves in the northern Rocky Mountains have apparently died from wounds they received while attacking prey on about 6 occasions. This level of mortality will not significantly affect wolf recovery. Other wolves are the largest cause of natural predation among wolves. About a dozen mortalities have resulted from territorial conflicts. Wherever wolves occur, including Montana, Idaho, and Wyoming, some low level of mortality resulting from territorial conflict between wolves is common. Those incidents occur but are so infrequent that they do not cause a level of mortality that would significantly affect a wolf population that is at or above recovery levels.

Humans are the largest cause of wolf mortality and the only cause that can significantly affect wolf populations at recovery levels. The annual survival rate of immature wolves in northwestern Montana and adjacent Canada from 1984 to 1995 was 80 percent (Pletscher *et al.* 1997); 84 percent for resident wolves and 66 percent for dispersers. That study found 84 percent of immature wolf mortality to be human-caused. Fifty-eight wolves from northwestern Montana with functioning radio-collars have died between 1987 and 1996, and humans caused the death of 49 (84 percent). Trends in causes of wolf mortality seem to be similar since 1996. Wolves are more likely to be radio-collared if they come into conflict with people, so the proportion of mortality caused by agency depredation control actions could be overestimated by this study. People who illegally kill wolves may destroy the radio-collar so the proportion of illegal mortality could be under-estimated. However, the wolf population has continued to expand rapidly in the face of human-caused mortality.

As was typically the case elsewhere in North America, humans were the largest cause of wolf mortality in northwestern Montana. Wolf control was the leading cause of death for wolves since their return to northwestern Montana.

The EIS (Service 1994a) predicted that 10 percent of the reintroduced wolves would be removed annually for depredation control with an additional 10 percent dying annually from other causes. Known annual mortality has been below the 20 percent annual level that was predicted in the EIS. Compared to naturally colonizing wolves, reintroduced wolves had a lower proportion of human-caused mortality because they were released in remote areas where contact and conflicts with people were less likely. Relocated depredating wolves in northwestern Montana had a higher proportion of human-caused mortality (96 percent) than either reintroduced (61 percent) or naturally colonizing wolves in northwestern Montana (71 percent excluding legal harvest in Canada). In northwestern Montana, relocated depredating wolves traveled widely and often resettled in places similar to the areas that they had been removed from, typically private ranch land. Consequently they continued to come into conflict with people and livestock (Bangs *et al.* 1998).

The levels of documented human-caused mortality among wolves in the northern Rocky Mountains have not, at this time, been significant enough to cause declines in wolf populations or to slow overall wolf population growth. The protection of wolves under the Act appears sufficient to promote wolf population growth. Under the provisions of the experimental population rules for the central Idaho and Yellowstone areas, wolf population growth has been high. Although the new special management regulations under section 4(d) of the Act will allow some expanded take of problem wolves outside the experimental population areas, such regulations will still sufficiently protect wolves from human persecution. Continued steady growth towards recovery levels is therefore expected, and recovery targets should be achieved by the end of 2002 (see the *Special Regulations Under Section 4(d) for Threatened Species* section below).

Enforcement of the Act's prohibitions on taking wolves listed as ''experimental'' and ''endangered'' has been successful to date. Twelve wolves have been illegally killed in the experimental areas, and 6 cases have been resolved. In northwestern Montana, 9 wolves were known to have been illegally killed, and 4 cases have been resolved. Fines have ranged from $500 to $10,000, with jail sentences of up to 8 months incarceration and 1 year supervised release being imposed for some violators. The legal or illegal killing documented to date has not been at a level that could affect wolf population growth to recovery levels.

To date, 3 experimental wolves were legally killed (one in Montana and in Idaho) under the provisions of the experimental population special regulation by livestock producers who saw the wolves attacking livestock. They reported the shooting of the wolves to authorities within 24 hours as required. Investigations confirmed compliance with the experimental rules, and no further action was taken. Fewer than a dozen other wolves have been unintentionally killed in the northern Rockies by vehicles, coyote cyanide (M–44) devices, and traps, and during control and management actions, but investigations of these incidents concluded that prosecution was not warranted. These types of mortalities are relatively rare and will not affect wolf population growth to recovery levels.

Special management regulations under section 4(d) of the Act will allow for the legal take of wolves under more circumstances than the existing special regulation. The previous special management regulations under section 10(j) of the Act will continue to apply to the two nonessential experimental populations in the northern U.S. Rocky Mountains (see the *Special Regulations Under Section 4(d) for Threatened Species* section below). Therefore, we do not expect wolf mortality rates to change significantly as a result.

Southwestern DPS. Through January 2003, illegal killing has been confirmed as the cause of death of 11 of the 74 Mexican wolves that have been released to the wild. Two of the 74 wolves released died due to injuries sustained from other predators. However, there are now 8 packs in the wild, of which 7 appear to have produced pups in 2002, and 4 of those 7 litters were conceived and born in the wild. In addition, we continue to release additional gray wolves into the Blue Range Wolf Recovery Area (BRWRA) of New Mexico and Arizona. However, based on the current growth of the BRWRA population, releases will likely be scaled back or eliminated in the next few years. The rate of natural wolf population increase, combined with our continuing release of captive-raised wolves, is such that population growth is expected to continue despite these losses from human and animal-caused mortalities. Therefore, although predation may initially slow recovery, we do not believe that predation or illegal killing will preclude recovery of the Mexican wolf. Killing or capture and permanent confinement of gray wolves for scientific and educational purposes is discussed under Factor B, above.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

Upon being listed under the Act, the gray wolf immediately benefitted from a

Federal regulatory framework that includes prohibition of take, which is defined broadly under the Act to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement that we develop and implement a recovery program for the species. In addition, the 1978 designation of critical habitat in Minnesota and Michigan (43 FR 9607) further requires Federal agencies to ensure that their actions do not result in the destruction or adverse modification of the primary constituent elements of the habitat in those designated areas. Many of these protective regulations and conservation measures have substantially improved the status of the gray wolf.

Eastern DPS. A June 29, 1998, announcement by then Secretary of Interior Bruce Babbitt and then Service Director Jamie Rappaport Clark described, in part, our intention to propose a delisting of gray wolves in the Western Great Lakes. That intention was based upon our belief that State wolf management plans for Minnesota, Wisconsin, and Michigan would either be completed, or would be sufficiently close to completion, so that our delisting and reclassification proposal could be based on an analysis of the protective mechanisms and management strategies and actions described in those three plans.

In late 1997 the Michigan wolf management plan was completed and received the necessary State approvals. The Wisconsin Natural Resources Board approved the Wisconsin wolf management plan in October of 1999. Our biologists have participated on the teams that developed these two State plans, so we are familiar with their evolution and likely future direction. We believe that these plans provide sufficient information for us to analyze the future threats to the gray wolf population in Wisconsin and Michigan after Federal delisting.

During the 1999 legislative session, the Minnesota Legislature failed to approve a State wolf management plan and regulatory bill that would have allowed us to evaluate the future of the Minnesota wolf population in the event it would be delisted and removed from the protections of the Act. Furthermore, as we finished work on our proposal in mid-February 2000, the Minnesota Legislature had not considered the wolf management bill produced by the MN DNR in early 2000. Therefore, in contrast to the June 1998 announcement by Babbitt and Clark, we did not propose to delist wolves in the Western Great Lakes. Rather we proposed to reclassify wolves in Wisconsin, Michigan, North Dakota, and South Dakota to threatened, bringing them to the same status that wolves in Minnesota were given in 1978.

The Minnesota Legislature subsequently passed wolf legislation and directed the MN DNR to complete a management plan in conformance with that legislation. MN DNR completed the Minnesota Wolf Management Plan (MN Plan) in early 2001. Although the Minnesota legislation and the MN Plan were not available in time to play a role in our July 2000 reclassification proposal, they will be carefully evaluated as we review all relevant information in preparation for a future proposal to delist gray wolves in the Eastern DPS.

Under this final rule, gray wolves will continue to be protected by the provisions of the Act throughout the Eastern DPS. The regulatory changes in that protection that will take place are twofold: (1) The recovering wolf populations in Wisconsin and Michigan, as well as wild wolves anywhere in the Eastern DPS, now will be protected as a threatened species, rather than as an endangered species; and (2) for the first time wolves in all but the eastern quarter of the DPS will be subject to routine, but limited, lethal depredation control measures under the terms of a special regulation under section 4(d) of the Act.

One change in protection that will result from a reclassification from endangered to threatened was discussed above, under the *Summary of Factors Affecting the Species* section, factor B, *Overutilization for commercial, recreational, scientific, or educational purposes* above. The change stems from the broader authority of Service or State employees, or their designated agents, to take a member of a threatened species without a need to obtain a permit from us. Furthermore, we can issue permits to take threatened species for a wider variety of purposes than for endangered species. The impact of this increased take authority on wolf recovery is believed to be insignificant; additional discussion is found in that earlier section.

The second impact of this reclassification is indirect, and it stems from our ability to implement special regulations under section 4(d) of the Act for threatened, but not endangered, species. We have used that authority to finalize a special regulation for the lethal control of depredating wolves in much of the Eastern DPS that is very similar to the lethal control currently authorized by the special regulation that has been in effect for Minnesota wolves since December 12, 1985 (50 FR 50792; see also 50 CFR 17.40(d)). That special regulation allows the killing of depredating wolves by certain government employees or agents, subject to several restrictions.

Depredation Control Programs in the Midwestern States. Wolves that are injuring and/or killing domestic animals in the Midwest have been controlled in different ways, depending upon their listing status under the Act and their importance to our gray wolf recovery programs. In Minnesota depredating wolves have been lethally controlled under a special regulation, because they are listed as threatened. Section 4(d) of the Act allows lethal take of threatened animals under a special regulation. (Details on the Minnesota depredation control program are provided later in this subsection.)

Depredating wolves in Wisconsin and Michigan, previously listed as endangered and therefore previously not eligible for a section 4(d) special regulation, have been trapped and released in a suitable and unoccupied area at some distance from the depredation location. The goal of this approach was to eliminate future depredations by moving the wolf or wolves to a suitable but vacant area at a location with adequate wild prey, and with minimal or no exposure to domestic animals. However, the results of this approach vary widely. In some cases the wolf will become resident at the new site and will not resume its previous habit of preying on domestic animals. In other cases the wolf attempts to return to its previous territory, continues its depredations of domestic animals at the new site, or is killed by nearby resident wolves. This approach has a greater chance of succeeding if there are several areas of suitable unoccupied habitat from which to choose for release of the wolf, so that a release location can be selected that is very remote from the wolf's previous territory.

However, the rapidly growing wolf populations in both Wisconsin and Michigan make it increasingly difficult to find suitable, but unoccupied, areas into which a depredating wolf can be successfully released. In one recent incident of the capture and translocation of a depredating wolf in Wisconsin, the animal left the release site and had traveled half of the distance back to its capture site before being mistaken for a coyote and shot

(Wydeven *in litt.* 1999). There is also growing opposition to the translocation of depredating wolves, and at least one county board has passed a resolution opposing the relocation of additional wolves to that county. Residents in the area to where these wolves are moved are concerned that the depredation problem will recur in their area.

Due to the decreasing effectiveness of, and increasing opposition to, translocation of depredating wolves, as well as the high monetary and labor costs of such attempts, the States of Wisconsin and Michigan have requested the authority to carry out lethal depredation control measures, similar to what has been done by USDA/APHIS-Wildlife Services in Minnesota. As the wolf population grows in number and expands in range in those two States, those wolves will increasingly occupy agricultural areas and will be exposed to additional domestic animals as potential prey. We believe that the new special management regulations under section 4(d) of the Act will provide increased flexibility and efficiency in managing wolves and are consistent with conservation of the gray wolf (see the *Special Regulations under Section 4(d) for Threatened Species* section below).

Based upon depredation control statistics from Minnesota, we expect the lethal control of depredating Wisconsin and Michigan wolves to be very small during the next few years. Data from Minnesota show that an expanding wolf population's increasing exposure to domestic animals will likely lead to increased depredation incidents, and the need for additional lethal control of those wolves. From 1980 to 1984, with a late winter wolf population of about 1,350 animals, an annual average of 2.2 percent of the Minnesota wolf population was killed by USDA/APHIS-Wildlife Services to reduce depredation problems. From 1985 to 1989, with a late winter wolf population averaging about 1,600 wolves, the annual average of wolves killed for depredation control increased to 3.0 percent. Additional increases have occurred in the 1990s.

With the Wisconsin and Michigan (Upper Peninsula) late winter wolf populations at about 250–350 in each State, we estimate that an average of about 2 to 3 percent of those wolves will be taken annually through lethal depredation control actions in response to attacks on livestock. This will be about 6 to 10 wolves in each State. Given the average annual population increases of 19 to 24 percent over recent years in each of these States, the effect of such levels of lethal depredation control will not prevent the continued growth of the wolf population in either State, and will probably be so small that it does not noticeably slow that growth over the next few years. Wolf recovery will not be affected in either State. Reporting (within 15 days) and monitoring requirements will ensure that the level of lethal depredation control is evaluated promptly and can be curtailed if necessary. Therefore, we do not believe that lethal livestock depredation control will be a significant threat to the future of wolves in either Michigan or Wisconsin, or that it will result in a need to reclassify those wolves back to endangered status in the foreseeable future.

In recent years there has been an increase in the number of dogs attacked by gray wolves in Wisconsin, with 17 killed and 1 injured in 2001. In almost all cases, these have been hunting dogs that were being used for, or being trained for, hunting bears and bobcats at the time they were attacked. It is believed that the dogs entered the territory of a wolf pack and may have been close to a den, rendezvous site, or feeding location, thus triggering an attack by wolves defending their territory or pups. As many as 7 or 8 wolf packs may have been involved in the 2001 attacks on hunting dogs (WI DNR unpublished data). The Wisconsin Wolf Management Plan States that ''generally only wolves that are habitual depredators on livestock will be euthanized'' (WI DNR 1999a). Furthermore, the State's draft guidelines for conducting depredation control actions on wolves that retain a Federal threatened status say that no control trapping will be conducted on wolves that kill ''dogs that are free-roaming or roaming at large.'' Lethal control will only be conducted on wolves that kill dogs that are ''leashed, confined, or under the owner's control on the owner's land'' (Wisconsin Wolf Technical Committee 2002). Because of these State-imposed limitations, we do not believe that lethal control of wolves depredating on hunting dogs will be a significant additional source of mortality in Wisconsin.

Michigan has not experienced as high a level of dog attacks by wolves, although a slight increase in such attacks has occurred over the last decade. The number of verified attacks was one dog killed in 1996, three (two injured, one killed) in 1999, and three killed in 2001. Similar to Wisconsin, MI DNR does not intend to trap and move wolves that depredate on free-ranging dogs. However, trapping and relocation of wolves would be considered if wolves have killed confined pets and remain in the area where more pets are being held (Hammill *in litt.* 2002).

The new special regulation that authorizes depredation control in Wisconsin and Michigan requires that wolves killed for depredation control purposes be reported to us within 15 days. Thus, we will be promptly alerted if an unexpected number of depredating wolves are killed under the new special regulation, and we can initiate corrective action, if necessary.

Since wolves were protected under the Act, only one wolf has been killed for depredation control purposes in Wisconsin and Michigan. That adult wolf was killed by the WI DNR in 1999, under the provisions of a permit that we issued to deal with that specific instance. This was done to end a chronic depredation problem at a private deer farm after the failure of extensive efforts to live-trap and remove the wolf (WI DNR 1999b).

For both North Dakota and South Dakota we had anticipated potential wolf depredation problems associated with mostly single, dispersing wolves from the Minnesota and Manitoba populations. To cope with these anticipated depredations we have had a ''Contingency Plan for Responding to Gray Wolf Depredations of Livestock'' in place for each State for several years (Service 1992b, 1994b). In partnership with USDA/APHIS-Wildlife Services and State animal damage control agencies, the contingency plans provide for the capture and permanent transfer to American Zoo and Aquarium Association (AZA)-approved holding facilities, such as zoos, captive breeding centers, or research facilities, of all depredating or injured/sick wolves in North Dakota and South Dakota. The lethal control of depredating and injured/sick wolves is authorized by the plans only if no AZA-approved holding facilities could be identified. Verified wolf depredations occur approximately once every other year in North Dakota, with the most recent occurring in June of 1999; there have been no verified wolf depredations in South Dakota in recent decades. To date, in neither State has it been necessary to implement either the nonlethal or lethal control measures authorized under the contingency plans, although confirmed wolf sightings and some incidents of wolf depredation continue to occur.

North Dakota and South Dakota are recognized as lacking significant potential for restoration of the gray wolf, and neither our Eastern Recovery Plan nor our Northern Rockies Plan includes those States in its list of possible locations for restoration of gray wolf populations (Service 1987, 1992a). Therefore, lethal control of depredating wolves in these two States will not

adversely affect the Eastern DPS recovery program. We believe that the new special regulations finalized with this rule to allow lethal control of depredating wolves will help to promote greater public acceptance of the gray wolf recovery programs (see the *Special Regulations under Section 4(d) for Threatened Species* section below). Furthermore, such regulations will allow Federal, State, and tribal agencies in the Dakotas to be more responsive to depredation incidents, thus, minimizing conflicts between wolves and livestock production. In addition, such regulations will eliminate the costs, time, and facilities needed to capture, transport, and house live gray wolves.

We expect a much higher proportion of North Dakota and South Dakota wolves to become involved in depredation on domestic animals than the approximately 2 to 3 percent we expect in Wisconsin and Michigan. Thus, if the Minnesota wolf population continues to expand and provide additional dispersing wolves, lethal depredation control activities in North Dakota and South Dakota may also kill on the order of 4 or 5 wolves annually in each of these 2 States. These mortalities will neither slow the recovery of the Minnesota and Michigan-Wisconsin wolf populations nor delay the eventual delisting of the Eastern DPS, because the Eastern Plan does not rely on wolves in North Dakota or South Dakota to achieve any of its recovery criteria. If wolves in the Dakotas are not involved in depredations on domestic animals they retain all the normal protections of a threatened species. If they return to Minnesota or to the Wisconsin-Michigan population, they may contribute to the continuing growth of the core wolf populations in the Midwest.

Our proposal would have applied the special regulation for lethal depredation control to all States within the proposed Western Great Lakes DPS, except Minnesota, which already is subject to a very similar special regulation. Because this final rule geographically expands the relevant DPS to additional States and retains the Act's protections for wolves as threatened throughout much of the eastern United States, we are also providing coverage of the special regulation to most, but not all, of those additional States.

The special regulation provides the authority for lethal control of depredating wolves to all parts of the Eastern DPS that are west of Pennsylvania. Except for Wisconsin, and the Upper Peninsula of Michigan, gray wolves that occur in the areas covered by the new special regulation are not necessary for the recovery of the Eastern DPS, and if they attack domestic animals State and tribal authorities will have authority for lethal control.

The special regulation for the Eastern DPS and its provision for lethal control of depredating wolves do not apply to wolves in Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine. No wolves are currently known to occur in this area, nor are these States within anticipated dispersal distance of the gray wolf population recovering in the western Great Lakes area, so there is a low probability of gray wolf depredation in these States. Furthermore, several State wildlife agencies in the Northeast have expressed support for natural wolf recovery and indicated a willingness to protect wolves that disperse into this region from Canada. In addition, as described above, the species identity of wolves that might naturally appear in northeastern States is uncertain at this time, and each individual wolf might be important to future wolf recovery efforts that might be undertaken there.

This final rule will not affect the current section 4(d) special regulation for wolf depredation control in Minnesota, and we expect that program will continue unchanged as long as those wolves are listed as threatened under the Act. During the period from 1980–1998, the Federal Minnesota wolf depredation control program has annually euthanized from 20 (in 1982) to 216 (in 1997) gray wolves. The annual average was 30 wolves killed from 1980 to 1984, 49 from 1985 to 1989, 115 from 1990 to 1994, and 152 from 1995 to 1999. Based upon estimates of the Minnesota wolf population during these periods, these numbers represent an average annual removal of approximately 2.2 percent, 3.0 percent, 6.0 percent, and 6.7 percent of the total population during those four 5-year periods, respectively. The lowest annual percentage of Minnesota wolves destroyed by USDA/APHIS-Wildlife Services was 1.5 percent in 1982; the highest percentage was 9.4 in 1997 (Paul 2001).

There is no evidence that this level of wolf removal for depredation control purposes has halted the increase in wolf numbers or range in Minnesota, although it is quite possible that the depredation control program may have slowed wolf population growth, especially since the late-1980s. Because the Minnesota wolf population has continued to grow at an average annual rate of nearly 4 percent since 1989, we believe that it is highly likely that a viable wolf population will continue to exist in Minnesota if a lethal depredation control program of this magnitude is continued. However, monitoring of the wolf population will become increasingly important if the percentage of wolves killed for depredation control continues to increase, or if other mortality factors increase in magnitude. Annual monitoring may become necessary to enable timely corrective action, including reduction of lethal depredation control activities, if the Minnesota wolf population begins to decrease or to contract in geographic range. At this time, however, it appears that continuing the current magnitude of lethal depredation control under the existing special regulation will not suppress the Minnesota wolf population.

State and Tribal Management and Protection of Wolves. The Wisconsin Wolf Management Plan recommended immediate reclassification from State-endangered to State-threatened status because the State's wolf population has already exceeded the State reclassification criterion of 80 wolves for 3 years; that State reclassification has already occurred. The Plan further recommends the State manage for a gray wolf population of 350 wolves outside of Native American reservations, and states that the species should be delisted by the State once the population reaches 250 animals outside of reservations. Upon State delisting, the species would be classified as a ''protected nongame species,'' a designation that would continue State prohibitions on sport hunting and trapping of the species. The Wisconsin Plan includes criteria that would trigger State relisting as threatened (a decline to fewer than 250 wolves for 3 years) or endangered (a decline to fewer than 80 wolves for 1 year). State delisting can occur while the wolf is still federally listed as either threatened or endangered, but the remaining stricter Federal protections would prevent the implementation of weaker State protections. Public taking of wolves will not occur while the wolf remains federally listed as threatened. The Wisconsin Plan will be reviewed annually by the Wisconsin Wolf Advisory Committee and will be reviewed by the public every 5 years.

Both the Wisconsin and Michigan Wolf Management Plans recommend managing wolf populations within each State as isolated populations that are not dependent upon frequent immigration of wolves from an adjacent State or Canada. Thus, even after Federal wolf delisting, each State will be managing for a wolf population at, or in excess of,

the 200 wolves identified in the Federal Recovery Plan for the Eastern Timber Wolf as necessary for an isolated wolf population to be viable. We support this approach and believe it provides further assurance that the gray wolf will remain a viable component of the western Great Lakes ecosystem in the foreseeable future.

The Wisconsin and Michigan wolf management plans recommend similar high levels of protection for wolf den and rendezvous sites, whether on public or private land. Both State plans recommend that most land uses be prohibited at all times within 100 meters (330 feet) of active sites. Seasonal restrictions (March through July) should be enforced within 0.8 km (0.5 mi) of these sites, to prevent high-disturbance activities such as logging from disrupting pup-rearing activities. These restrictions should remain in effect even after State delisting occurs.

While the tribes do not yet have management plans specific to the gray wolf, several tribes have informed us that they have no plans or intentions to allow commercial or recreational hunting or trapping of the species on their lands even if gray wolves were to be federally delisted. As previously discussed in the Summary of Factors Affecting the Species section, factor B, *Overutilization for commercial, recreational, scientific, or educational purposes*, tribes are expected to continue to provide sufficient protection to gray wolves on reservation lands to preserve the species' long-term viability in the western Great Lakes area.

At the request of the Bad River Tribe of Lake Superior Chippewa Indians, we are currently working with their Natural Resource Division and WI DNR to develop a wolf management agreement for lands adjacent to the Bad River Reservation. The tribe's intent is to reduce the threats to reservation wolf packs when they are temporarily off the reservation. Under the draft agreement, the WI DNR would consult with the tribe before using lethal depredation control methods in those areas, and would defer to the tribe's recommendations for wolves known to be part of a reservation pack. However, this agreement is still being developed, so its protective measures must be considered speculative. Other tribes have expressed interest in such an agreement, and if this and similar agreements are implemented they will provide additional protection to certain wolf packs in the Midwest.

On the basis of information received from other Federal land management agencies in the western Great Lakes area, we expect National Forests, units of the National Park System, and National Wildlife Refuges will provide additional protections to threatened gray wolves beyond the protections that will be provided by the Act and its regulations, State wolf management plans, and State protective regulations. For details, refer to the discussion above under the *Summary of Factors Affecting the Species* section, factor A, *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Western DPS. Previous to this new regulation, wolves in these States had two different listings under the Act: (1) Those wolves within the two nonessential experimental populations (all of Wyoming and most of Idaho and Montana) were, and continue to be, treated as threatened wolves for take purposes. However, for purposes of interagency cooperation (section 7 of the Act), those wolves are treated as species proposed for listing and receive limited consideration in the planning and implementation of Federal agency actions, unless those actions occur on units of the National Park System or the National Wildlife Refuge System, in which case the wolves are treated as a threatened species and are subject to the full protections of section 7. These wolves also were, and continue to be, subject to two special regulations that modify the normal protections of the Act for threatened species (under the nonessential experimental population designations in 59 FR 60252 and 60266; November 22, 1994). (2) Those wolves outside of the nonessential experimental populations were listed as endangered and were subject to the strictest protections afforded by the Act. This endangered status no longer applies to these wolves, and they are now classified as threatened.

The new special regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) will increase management flexibility for wolves in the Western DPS in areas outside of the experimental population areas, because they will allow take under additional circumstances. Wolves near livestock could be harassed in a noninjurious manner at any time on private land or on public land by the livestock permittee. Intentional or potentially injurious harassment could occur by permit on private land and public land. Wolves attacking not only livestock, but also dogs and guard animals, on private land could be taken without a permit if they are in the act of attacking such animals; on public land a permit will be required for such take. Permits could be issued by the Service to take wolves on private land if they are a risk to livestock, herding and guard animals, or dogs.

The increased management flexibility for take is expected to reduce and more quickly resolve conflicts between livestock producers and wolves by providing additional methods by which individual problem wolves can be removed from the wild population. We do not expect the take under these new special regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) to result in a significant increase in the removal of problem wolves.

Depredation Control Programs in the Western DPS. In the northern U.S. Rocky Mountain wolf recovery area, reports of suspected wolf-caused damage to livestock are investigated by USDA/APHIS-Wildlife Services specialists using standard techniques (Roy and Dorrance 1976, Fritts *et al.* 1992, Paul and Gipson 1994). If the investigation confirms wolf involvement, Wildlife Services specialists contact us and subsequently conduct the wolf control measures that we specify. If the incident occurred in Idaho, Wildlife Services also coordinates with Nez Perce Tribal personnel. The established process is for Wildlife Services to investigate the incident, we decide what control measures are appropriate, and then Wildlife Services personnel carry out those measures.

In 1988, the Service developed an interim wolf control plan that was based on the assumption that wolves which chronically attack livestock would not be tolerated by the local residents. The control plan initially applied to northwestern Montana and northern Idaho, and was later amended to include Washington State. Evidence showed that most wolves do not attack livestock, especially larger livestock, such as horses and cattle. We do not intend for our wolf recovery program to be based in part on wolves that have developed the practice of livestock depredation, because that would likely erode local tolerance for wolf recovery, possibly to the degree that recovery would be impossible. Therefore, we developed a set of guidelines under which depredating wolves could be harassed, moved, or even killed by agency officials to prevent a significant level of chronic livestock depredation from occurring. This interim control plan was based on the premise that agency wolf control actions would affect only a small number of wolves, while it would increase public tolerance for wolf recovery and enhance recovery success.

To date, our assumptions have been shown to be correct, as wolf depredation on livestock and subsequent agency control actions have remained at low levels, while the wolf population has expanded its distribution and numbers and is approaching recovery goals. Using this experience, we developed special regulations for the experimental population areas that would also promote wolf recovery while reducing wolf conflicts with livestock. Thus, we have incorporated important aspects of the interim control plan and the experimental population rules in the new 4(d) regulation that replaces the interim control plan.

In the areas that were covered by the interim wolf control plan and experimental population rules, control measures were continued until livestock depredations cease, even if all wolves in an area or a pack eventually had to be removed. When five or fewer breeding pairs are in a recovery area, wolves were relocated on their first offense. When at least six breeding pairs are present, wolves were killed after their first offense. Wolves that repeatedly depredated on livestock were killed.

In experimental areas, the more flexible special regulations allow landowners on private land and livestock producers on public land to harass wolves at any time. In the experimental areas, wolves attacking livestock on private land can be shot by landowners with a permit, and, after six breeding pairs are established, our permit can allow permittees to shoot wolves attacking livestock on public land. Special permits can be issued in areas of chronic livestock-wolf conflict that allow qualifying landowners and their adjacent neighbors to shoot a wolf on sight. In addition, other special permits can be issued to take wolves and approved State management plans can liberalize the conditions under which wolves may be taken. A private program has compensated ranchers full market value for confirmed and one-half market value for probable wolf-kills of livestock and livestock guard animals (Defenders of Wildlife 2002, Fischer 1989).

In northwestern Montana, and while wolves were listed as endangered, wolf control under a section 10(a)(1)(A) permit was conducted only when livestock were attacked. In the experimental areas, wolf control could also occur when other domestic animals, such as dogs, are attacked on private land more than once in a calendar year. Control in both of these situations consisted of the minimum actions believed necessary to reduce further depredations. The spectrum of control measures used included intensive monitoring of the wolves and livestock (including providing a telemetry receiver to the affected rancher), aversive conditioning (*i.e.*, capturing, radio-collaring, and releasing wolves on site or harassing wolves with noise-makers such as cracker shells), relocating or killing some wolves, or some combination of these approaches.

In northwestern Montana, agency wolf control removed 53 wolves from 1987 through 2002. Control actions removed an average of 6 percent of the population annually, with a range of 0 to 29 percent. In only 3 of those 15 years (1987: 29 percent, 1997: 20 percent, and 1999: 12 percent) did agency control actions remove more than 10 percent of the estimated wolf population in that area (Service *et al.* 2002). At no time did agency wolf control remove more than one-third of the wolf population annually, the human-caused mortality level that must be exceeded to prevent wolf population growth. The percentage of removal by agency control in northwestern Montana has been higher than in either the Idaho or Yellowstone areas, because northwestern Montana does not have similar large areas of refugia (millions of acres of contiguous public lands with year-round resident big game populations). This results in an overall lower wolf habitat and social carrying capacity and a higher level of conflicts than in either the Idaho or Yellowstone areas. We expect that under threatened status and the accompanying 4(d) rule, which replaces the interim wolf depredation control plan, the level of wolf mortality caused by agency and public control will be similar to that occurring (less than 10 percent annually) under the experimental population regulations in central Idaho and the Greater Yellowstone Area.

The control of problem wolves depredating livestock resulted in the removal of less than 5 percent of the wolf population in the northern Rocky Mountains from 1987 through 2002 (Service *et al.* 2002). During that period, a total of 148 wolves were killed by agency control because of chronic livestock depredation. Only in 1987 did wolf control remove more than 9 percent of the wolf population. Only 3 of the 150 wolves that have been removed were legally killed by landowners who saw them attacking their livestock on private land; the rest were removed by agency actions. Three wolves were also killed under permits to shoot wolves attacking livestock on public grazing allotments or under the permits that allow landowners to shoot a wolf on sight in areas of chronic wolf-livestock conflict. Human-caused mortality below 10 percent annually has not been shown to prevent a wolf population from growing. The EIS on wolf reintroduction predicated that about 10 percent of the wolf population would be removed by agency control actions annually. To date, agency control has been about half of the expected level, but that percentage may increase as the wolf population expands into areas where conflicts with domestic livestock are more likely.

At the end of 2002, nearly all of the most suitable wolf habitat in the northern Rocky Mountains of Montana, Idaho, and Wyoming was occupied by resident wolf packs. As the wolf population continues to expand, wolves will increasingly attempt to settle in areas intensively used for livestock production, a higher percentage of those wolves likely will become involved in conflicts with livestock, and a higher percentage will need to be removed. For the wolf population to become stabilized, human-caused mortality would have to remove 30 percent or more of the wolf population annually.

This final rule replaces the interim wolf control plan with the wolf control actions specified in the 4(d) rule for the Western DPS. While wolf control actions will continue to remove wolves that attack livestock in the Western DPS, we still expect that wolf population recovery was achieved by the end of 2002. Management of wolves under the management regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) is not expected to significantly increase wolf mortality rates, because relatively few wolves attack livestock.

The only significant difference in the management of problem wolves between the previous management under the interim control plan and the new management of wolves under the 4(d) rule once they have been reclassified from endangered to threatened outside the experimental population areas will be the taking of wolves in the act of attacking livestock or domestic animals on private land by private landowners. In the past 6 years in Idaho and Wyoming, only 3 nonessential experimental wolves have been legally taken under such circumstances by landowners, and we believe the level of take of nonexperimental threatened wolves under the new regulations will be similar. That level of take could not significantly increase wolf mortality rates or decrease the rate of wolf population recovery. Through the end of 2002, 15 lambs (in Utah), but no other

livestock or pets, have been confirmed killed by a wolf in the Western DPS outside of Montana, Idaho, and Wyoming, and consequently, no wolves were removed from these areas by agency control actions.

During depredation control actions for problem wolves in Montana, Idaho, and Wyoming, individual wolves have incurred injuries from capture that ultimately resulted in their death or removal from the wild (four in Idaho and two in Montana). Mortality from capture is rare and not a significant portion of total mortality in the wolf population.

We have determined that effective control of problem wolves benefits the conservation of the species in the northern Rocky Mountains (Service 1999).

Southwestern DPS. The protection provided by the Act and the special regulation for the southwestern nonessential experimental population have been the most important factors in the successful reintroduction of gray wolves to the Southwest, and in the slow but steady growth of the wild wolf population there. The listing status of gray wolves in the Southwestern DPS does not change with this final regulation. They will remain endangered, except for the reintroduced population which retains its status as a nonessential experimental population, and they will continue their recovery as a result of the ongoing protection provided by these regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf. The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the conviction that the species should never be a target of sport hunting or trapping, and the wolf traditions of Native American tribes.

We have seen a change in public attitudes toward the wolf over the last few decades. Public attitudes surveys in Minnesota and Michigan (Kellert 1985, 1990, 1999), as well as the citizen input into the wolf management plans of Minnesota, Wisconsin, and Michigan, have indicated strong public support for wolf recovery if the adverse impacts on recreational activities and livestock producers can be minimized (MI DNR 1997, MN DNR 1998, WI DNR 1999a). This increased public acceptance of wolves during the last 25 years also has reduced illegal persecution and killing of wolves. Another public attitudes survey is being planned to assess whether attitudes have changed in Michigan as the State's wolf population has expanded (Hammill, pers. comm. 2002).

Similar national support is evident for wolf recovery and reintroduction in the northern U.S. Rocky Mountains. With the continued help of private conservation organizations, States, and tribes, we can continue to foster public support to maintain viable wolf populations in the western Great Lakes area and the West, as well as for recovery of wolves in the Southwest. We believe that the special management regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) will further enhance public support for wolf recovery by providing more effective means for dealing with wolf__human conflicts as these conflicts-both real and imagined__increase along with expanding wolf populations.

Conclusion

We recognize that large portions of the historic range, including potentially still-suitable habitat within the DPSs, are not currently occupied by gray wolves. We emphasize that our determinations are based on the current status of, and threats faced by, the existing wolf populations within these DPSs. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that ''[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat.'' Similarly, we believe that when an endangered species has recovered to the point where it is no longer in danger of extinction throughout all or a significant portion of its current range, it is appropriate to downlist the listed species to threatened even if a substantial amount of the historical range remains unoccupied. When it is not likely to become endangered in the foreseeable future throughout all or a significant portion of its current range, it should be delisted.

The wolf's progress toward recovery in the Eastern DPS, together with the threats that remain to the wolf within the DPS, indicates that the gray wolf is not in danger of extinction in its entire range within the DPS. Moreover, the progress towards recovery of each of the two populations that comprise the metapopulation within the western Great Lakes States demonstrates that the species is not in danger of extinction in any significant portion of the range of the species within the DPS. We therefore conclude that gray wolves are no longer properly classified as endangered in the Eastern DPS. Accordingly, we have determined that the Eastern DPS deserves status as a threatened species under the Act.

We also conclude, based both on the wolf's recovery progress in the Western DPS, and on our assessment of the threats that will remain to the wolf within the DPS once the wolf is reclassified as threatened (including the continuation of the nonessential experimental population designation and its special regulations), that the gray wolf is not in danger of extinction throughout its range within the Western DPS. Because the three initially isolated populations in the Western DPS now function as a single large metapopulation, and because there is no other population of wolves within the DPS, this conclusion applies to all parts of the wolf's range in the DPS, and so we also conclude that the wolf is not in danger of extinction within any significant portion of its range in the DPS. The gray wolf therefore is no longer endangered throughout all or a significant portion of its range in the Western DPS. Accordingly, we have determined that the Western DPS deserves status as a threatened species under the Act.

In contrast, the gray wolves in the Southwest are still in the initial stage of recovery. The population's growth rate is low in comparison to the growth rates shown by the gray wolf populations in the Western Great Lakes and the Northern U.S. Rocky Mountains. However, this is expected when establishing a wild population from captive-born animals. Recent data indicate that the population growth rate will increase in the near future. Nonetheless, even with the protections of the Act, the currently small population of Mexican wolves, combined with the lack of a recovery goal or measure of sustainability, is still threatened with extinction throughout all or a significant portion of its range. Therefore, we have not reduced the protections for these wolves, and we have retained their designation as a nonessential experimental population in portions of Arizona, New Mexico, and Texas, and as endangered in those parts of the Southwestern DPS that are outside the experimental population area.

The Service intends to continue and complete its Eastern, Northern Rockies, and Southwestern gray wolf recovery programs. Furthermore, we will continue to focus our recovery activities in the current core recovery areas (*i.e.*, Minnesota, Wisconsin, Upper Peninsula of Michigan, Idaho, Montana, Wyoming, New Mexico, and Arizona). Once wolf recovery goals are achieved in the recovery areas of any one of the DPSs, we will proceed to delist the entire DPS that contains that respective recovery area, even if some of the States within the DPS lack wild gray wolves. The presence of gray wolves outside of the recovery areas is not required for the Service to reclassify or delist the entire DPS pursuant to the requirements of the Act.

Need for Immediate Implementation

The wolf population in Wisconsin and Michigan has increased by 30 percent since the publication of our July 2000 proposed rule. The number of wolves captured and translocated after depredating on domestic animals has similarly increased; finding suitable locations to release these depredating wolves has become extremely challenging in Wisconsin. The Board of Supervisors of Forest County, where WI DNR has previously translocated most of their depredating wolves, has recently passed a resolution opposing any additional WI DNR releases of known depredating wolves in that county. Local residents and officials from several other Wisconsin counties have expressed similar opposition. WI DNR has been negotiating with the Menominee Indian Reservation to release several known depredating wolves on the reservation, but a single multi-wolf release will likely exhaust the wolf carrying capacity of the reservation. Another problem is the opposition of local officials from the areas surrounding the reservation; they are concerned that the wolves will move beyond the reservation into the surrounding dairy farm area and resume their attacks on livestock.

The WI DNR has run out of suitable places to release depredating wolves, and is now having to release them in less than ideal locations (that is, too close to the capture point, too close to other livestock operations, or in areas with low deer densities from which wolf dispersal is more likely), and repeat depredations are expected to occur from these releases. Two suspected instances of depredations following translocation have already occurred. Repeat depredations following capture and translocation of known depredating wolves is not likely to be tolerated by some local residents, and State and Federal agencies may be perceived as not taking wolf-human conflicts seriously. To date, wolf recovery efforts in Wisconsin have benefitted from strong public support, and we do not want to further strain that support.

An immediate effective date for the reclassification to threatened status for the Eastern DPS, and the associated special regulations under section 4(d) of the Act, maximizes the ability of WI and MI DNRs to promptly and efficiently remove depredating wolves. Such timely and effective response will reduce the incentive for vigilante wolf killings and should help to foster public support for continuing wolf population growth.

In the Western DPS, the special rule should be made effective immediately because the wolf population in the northern Rocky Mountains is continuing to rapidly expand its numbers and distribution. The peak of wolf dispersal is in fall and early winter so immediate implementation of the rule can provide important benefits for wolf conflict reduction and conservation in northwestern Montana and in areas surrounding the two NEPs. Wolves in northwestern Montana are becoming more numerous and many of those wolves will continue to live in and around people. The special rule provides the Service with additional management tools and flexibility as additional conflicts with people develop. Continued wolf population growth will also result in an increased probability that individual wolves will disperse into neighboring States from the northern Rockies recovery areas. Those wolves may need management by the Service if they become involved in conflicts with people. The finalization of this rule took much longer than anticipated, and its conservation measures are urgently needed to help with wolf restoration efforts and should not be delayed any further.

Therefore, we find there is good cause under 5 U.S.C. 553(d)(3) to implement these rules immediately.

Gray Wolves in Captivity

We recognize that there are many gray wolves being held in captivity for a variety of reasons. Some of these are being held for research, propagation, or educational projects that are part of gray wolf recovery programs; many others are considered pets or are held for other reasons. Those captive wolves potentially can be a valuable part of the recovery program for the areas from which they originated. For example, they may become useful in genetic or taxonomic studies, or serve as a potential source of wolves that could be released into the wild. This is especially true for our gray wolf recovery program in the Southwest. Captive-rearing facilities for this recovery program exist within the geographic boundaries of all three DPSs, as well as in the area that we have now delisted. We believe those captive wolves have sufficient potential importance in our future recovery efforts so that they warrant the continued protections of the Act at the same level as their wild counterparts, regardless of the location of their captivity.

Therefore, we are linking the listing status of captive gray wolves to the listing status of their geographic origin. We have defined the three DPSs to include wild gray wolves living within the boundaries of the DPSs, as well as those captive wolves that were removed from the wild, or whose ancestors were removed from the wild, from within the geographic boundaries of a DPS, regardless of where the captive wolves may be held. If a DPS is delisted in the future, those captive wolves that originated, or whose ancestors originated, from within that DPS will also be delisted at that time.

Other Alternatives Considered

Our proposal contained discussion of several other alternative actions that we considered as we developed the proposal. Among those other alternatives were creating larger or smaller DPSs in the eastern half of the United States and including more or all States within the DPSs. In the discussion of the latter alternative, we specifically mentioned examples such as including California, Nevada, New Jersey, Massachusetts, and Kansas in a DPS, in which case they would have the same threatened or endangered classification as the rest of the DPS. We described why those alternatives were not our proposed action; however, we requested comments and other information on those alternatives, as well as on other alternatives that we might not have considered at all. We received many comments on some of these alternatives, and we have reconsidered their implementation. We will not provide further discussion of those other alternatives in this final rule, except for the aspects of those alternatives that we have incorporated into this final rule. Those discussions are found within the appropriate parts of this document.

Changes From the Proposed Rule

As a result of comments or additional data received during the comment

period, or due to additional analysis on our part, several changes were made to the DPSs and the special regulations that we proposed on July 13, 2000 (refer to Maps 2 and 3 below). Some of these changes incorporate components of several of the alternatives that were discussed in our proposal and for which we requested comments. In addition, combining two DPSs and adopting alternate DPS boundaries necessarily resulted in our consideration of including the additional areas under the coverage of the special regulations we proposed under section 4(d) of the Act. The following paragraphs discuss these changes.

Overall, this final rule results in smaller changes in the previously provided protections of the Act than we had recommended in our July 2000 proposal. The final rule contains no changes to the Act's protection of the gray wolf that are more extensive than what we had proposed.

Combining Proposed Western Great Lakes DPS and Proposed Northeastern DPS—These two proposed DPSs have been combined into a larger DPS called the Eastern Gray Wolf DPS.

At the time we proposed the listing of a Northeastern Gray Wolf DPS, we were well aware that the taxonomy of wolves in eastern North America was under scrutiny and was potentially subject to revision. We were also aware that evidence for the existence of a wolf population in the Northeast—while increasing in the 1990s—was still insufficient to conclude that a resident gray wolf population existed there. However, at that time we believed the gray wolf likely was the historical wolf in the Northeast, and we expected to receive additional information supporting its continued existence there during the comment period.

Since our proposal was developed, we have received insufficient information to substantiate that a wolf population exists in the area we proposed for a Northeastern DPS. Furthermore, recent molecular genetics work (Wilson *et al.* 2000) advances the view that the wolf currently occurring in nearby southeastern Ontario and eastward into part of Quebec is the purported new canid species *Canis lycaon* and not a gray wolf (*C. lupus*).

Given these two factors—the lack of a current wolf population and the continuing uncertainty about the identity of the historical wolf—at this time, we cannot list a separate gray wolf DPS in the Northeastern States. Because the identity of the historical wolf in the Northeast is still unresolved and the gray wolf has not been ruled out as that entity, we are taking the conservative approach and are retaining protection for any gray wolves that might remain in, or move to, the Northeastern States by combining this geographic area with the proposed Great Lakes DPS and calling it the Eastern Gray Wolf DPS. The entire Eastern DPS is listed as threatened in recognition of the ongoing successful recovery progress shown by the Midwestern wolf populations.

We will reconsider this issue when we consider any listing, reclassification, or delisting action that affects the Eastern DPS.

Delisting Only in Areas Where Previously Listed in Error—The final rule delists the gray wolf in parts or all of 16 eastern and southern States, rather than parts or all of 30 States, as proposed.

We had proposed to delist the gray wolf in parts or all of 30 States, because we believed that gray wolf restoration is not necessary and not feasible in those areas. Therefore, we believed it would be appropriate to remove the Federal regulations pertaining to gray wolves in those areas. Such a change would have no impact on our current gray wolf recovery programs, and it seemed reasonable to remove regulations from those geographic areas where they provided no foreseeable benefits to the species.

However, neither the Act nor its implementing regulations allow the delisting of a portion of a listed species' historical range because restoration is not necessary and not feasible in that area. Delisting can only occur if the listed species is recovered, if the listed species is extinct, or if the original listing was based on data, or data interpretation, that were in error (50 CFR 424.11(d)).

As described in the *Historical Range of the Gray Wolf* section above, the species' historical range did not extend into many southern and eastern States. Therefore, our 1978 listing of the gray wolf throughout the 48 States and Mexico was partially in error. This final rule corrects the 1978 error by delisting the gray wolf in all or parts of 16 southern and eastern States that were not within the species' historical range. The remaining conterminous States and Mexico will remain in one of the listed DPSs until gray wolves in that DPS are recovered, the species becomes extinct, or the area is shown to have been listed in error.

Retaining Listings for Areas Previously Proposed for Delisting—California and Nevada have been added to the Western DPS. Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, Connecticut, Rhode Island, and Massachusetts have been added to the Eastern DPS (formerly the Western Great Lakes and Northeastern DPSs). Oklahoma west of Interstate 35 and Texas north of Interstate 40 have been added to the endangered Southwestern DPS that includes parts of the United States and Mexico.

Because we are delisting the gray wolf in 14 fewer States than we proposed, those 14 States must remain part of a listed entity. In general, we have added individual States to the DPS containing the core wolf population from which those States are most likely to receive dispersing gray wolves. For example, on the basis of several cases of probable Minnesota wolves dispersing into the Dakotas (including extreme western south Dakota (Licht and Fritts 1994; Straughan and Fain 2002)), and an absence of any evidence of Rocky Mountain wolves dispersing into those States, we have placed the western boundary of the Eastern DPS at the western borders of the Great Plains States.

Similarly, because of their great distance from core Midwestern wolf populations and their relative proximity to active Southwestern gray wolf recovery areas, western Oklahoma and northern Texas are included in the endangered Southwestern DPS instead of the threatened Eastern DPS. Thus, they retain their previous listing as endangered, as do those gray wolves in the Southwest United States and Mexico. While we believe there is only a low likelihood that wolves from New Mexico or Arizona will disperse to northern Texas or western Oklahoma, it is even less likely that Midwestern wolves will disperse there.

The entire States of California and Nevada have been added to the Western DPS. The northern portions of these States are a relatively short distance from the existing and expanding gray wolf populations in Idaho and Wyoming, and wolves dispersing from those populations have already moved to locations only a short distance from the California and Nevada State lines. Dispersal into California and Nevada may have already occurred, but has not yet been verified. Thus, the northern portions of these two States clearly belong in the Western DPS. While it may appear from a superficial consideration of a map and the known dispersal distances of wolves in other areas (refer to the following section for additional discussion) that Southwestern (Mexican) wolves are more likely to disperse to southern California and Nevada than are northern U.S. Rockies wolves, we do not believe this is necessarily correct. The Colorado

River will be a substantial obstacle to any wolves attempting to disperse westward from the reintroduced wolf population in Arizona, and the potential for wolves to disperse long distances across desert habitat is unknown. Therefore, we believe wolf dispersal to southern California and southern Nevada is similarly unlikely from either Arizona or the northern U.S. Rockies. Therefore, in the absence of clear biological support for either the inclusion or exclusion of southern California/Nevada in the Western DPS, we have decided to include these two States in the Western DPS for the sake of administrative convenience and to facilitate public understanding of the boundaries applicable to our new gray wolf regulations.

Therefore, as we have delineated them, the boundaries of these three gray wolf DPSs not only completely encompass the core gray wolf recovery populations and their recovery areas, but also include the known locations of all documented dispersers and the most likely locations for future dispersers from those core populations. While our Vertebrate Population Policy does not require the complete isolation of DPSs, it does require that they be ''markedly separated'' from each other and from other populations of the species. Based on documented wolf movements to date, these DPS boundary locations exceed that requirement.

Change to the Boundary Between the Western DPS and the Southwestern DPS—We proposed that the boundary between the Western DPS and the Southwestern DPS would be in northern Arizona and New Mexico, along the northern border of the experimental population area established for the nonessential experimental population of gray wolves in Arizona and New Mexico. This would have resulted in a large portion of the boundary between the Western DPS and the Southwestern DPS being less than 160 km (100 mi) from areas currently occupied by wolves in the Southwestern (Mexican) wolf recovery program, but being nearly 800 km (500 mi) from the southernmost wolf packs in the northern U.S. Rockies.

To date we have verified records of two northern U.S. Rocky Mountain wolves dispersing into northern Utah and no verified records of wolves dispersing into Colorado. Similarly, we have no verified records of Southwestern wolves dispersing into extreme northern Arizona or New Mexico, or into the southern half of Utah or Colorado. However, dispersal distance data from the Midwest and from other areas of the Rockies (Fritts 1983, Missouri Dept. of Conservation 2001, Ream *et al.* 1991) show that gray wolves disperse as far as 800 km (500 mi) from existing wolf populations. More routine long-distance movements probably are on the order of 400–480 km (250–300 mi).

Therefore, we have concluded that, in the final rule that establishes the Southwestern and Western DPSs, we should use a boundary that is more consistent with known and expected dispersal distances than was the boundary recommended in our July 13, 2000, proposed rule. U.S. Highway 50 in Utah and Interstate 70 in Colorado represent such a boundary. Furthermore, these highways are clear and convenient features on maps and on the landscape, and should facilitate implementing and enforcing these regulations on the ground. For these reasons, we are using these highways in Utah and Colorado to delineate a portion of the boundary between the Western Gray Wolf DPS and the Southwestern Gray Wolf DPS.

This boundary change also results in a larger area in which wolves will retain an endangered listing than was shown in our July 13, 2000, proposal. Gray wolves that disperse into the southern half of Utah and Colorado or into the portions of Arizona and New Mexico north of the nonessential experimental area will have entered the Southwestern DPS and will be protected as endangered wolves. However, if they are identifiable as having originated from one of the NEPs, they will be subject to the provisions for managing dispersing wolves as described in the appropriate experimental population rule at 50 CFR 17.84(i) or (k).

Changes to Proposed 4(d) Rule for the Western DPS—The conditions under which a private citizen can take a wolf in this final rule for the Western DPS are slightly more restrictive than those we proposed in July 2000. Under the proposal, a person could take a gray wolf on private land if it were seen physically attacking any domestic animal, if there was evidence of a wolf attack such as wounded domestic animals, and such taking was reported within 24 hours. In this final rule, such taking is allowed by a landowner, and without a permit, when a wolf is seen attacking any livestock (cattle, sheep, horses, or mules), livestock guarding or herding animals, or dogs on private land; such taking also can be done by permit on Federal grazing allotments. Some people commented that allowing wolves to be taken for attacking any domestic animal was too liberal and, in the case of small domestic animals, we would lack the type of documentation (physical evidence of wounds made by wolves) that would be needed to prevent abuse of this provision. Some types of domestic animals, such as rabbits or small fowl, are too small for us to be able to determine if they were attacked by wolves. In addition, since 1987, when the first wolf depredation on livestock occurred, until December 2001, only cattle (n=188), sheep (n=494), horses (n=3), llamas (n=4), and dogs (n=43) have been confirmed to have been attacked by wolves in the northern Rockies. Other types of domestic animals are extremely rare in the parts of the western United States where wolves may occur, and wolf depredation on those types of smaller animals is unlikely because they are usually kept in pens. This final rule gives private landowners or Federal grazing permittees the ability to protect the types of domestic animals that might be vulnerable to wolf depredation. The conditions under which wolves may be legally taken would minimize the number of wolves that would be killed by private citizens without reasonable cause.

Injurious harassment (that is, by using nonlethal ammunition, such as rubber bullets or bean bag projectiles issued by the Service after appropriate training) is also being allowed under Service-issued permits on public livestock grazing allotments to reduce the incidence of bold wolf behavior. Aversively conditioning wolves that have become bold or begin to closely associate with livestock could help reduce wolf-livestock conflicts and the need for subsequent agency lethal wolf control. Providing this management tool under permit for livestock producers on public land grazing allotments would allow its selective use, would prevent abuse, and is not expected to increase wolf mortality, and may decrease it.

The Service has also eliminated the 10 breeding pair per State requirement prior to allowing lethal take permits for private landowners. This was changed to increase the potential to implement this type of important wolf management tool on private lands that in the future might experience chronic depredation by wolves, especially in States adjacent to Montana, Idaho, and Wyoming. It is highly unlikely that any area or State outside of the experimental populations areas, other than Montana, will have 10 or more breeding pairs before wolves are delisted. The overall wolf reclassification and recovery goal is based upon the overall number of breeding pairs in the northern U.S. Rocky Mountains, rather than those in each State. Eliminating the 10 breeding pairs requirement will eliminate confusion over the number of wolves

per State and how wolf breeding pairs that have home ranges across State or experimental population borders might be counted.

The requirement that previously confirmed wolf-caused domestic animal depredations have occurred in the current year as well as at least one previous year within the last 10 years, or twice in the current year, has been added to demonstrate a pattern of chronic wolf depredation on that area of private property. This additional requirement will also clarify that this provision of the special rule contains the same conditions as must be satisfied for us to grant the take permits that are currently authorized in the experimental population rules for Montana, Idaho, and Wyoming at 50 CFR 17.84(i)(3)(x).

Wider Geographic Application of Proposed 4(d) Rule for the Formerly Proposed Western Great Lakes DPS—The special regulation that we proposed for the States of Wisconsin, Michigan, North Dakota, and South Dakota now applies to all States within the Eastern DPS that are west of Pennsylvania, excluding Minnesota. It does not apply to Pennsylvania and other Eastern DPS States that are east of Ohio. Individual gray wolves that might appear in these area may be important to future wolf recovery efforts in the Northeast. Minnesota wolves continue to be covered by a preexisting special regulation at 50 CFR 17.40(d).

Our proposed special regulation for the proposed Western Great Lakes DPS was primarily intended to enable States and tribes outside of Minnesota to use lethal control measures, at their discretion, in a manner that would efficiently and effectively reduce wolf depredations on domestic animals. We believe this approach is consistent with the recovery of the wolf population in Minnesota, Wisconsin, and Michigan.

We are now applying these regulations to most States within the Eastern DPS, on the basis of our conclusion that very few, if any, wolves will be taken in these additional States, and that such take is consistent with recovery of the wolf in the Eastern DPS.

Northeastern wild wolves should not be subject to lethal depredation control until their origin and identity has been determined, or their potential recovery role is otherwise evaluated. Therefore, we are not including the States and tribes east of Ohio in the coverage of this special regulation. However, if such wolves are determined not to be important to wolf recovery in the Northeastern United States or elsewhere, we will take appropriate action to address the depredation problem.

We have also added wording to this 4(d) rule to clarify that wolves that threaten human safety may be taken, not only by employees of certain Federal, State, and tribal agencies, but also by agents of those agencies who have been designated in writing for that purpose. The phrase ''demonstrable but nonimmediate'' has been added to further specify the form of threat to human safety that could trigger such a taking. These additions ensure consistency with the similar regulation for endangered species at 50 CFR 17.21(c)(3)(iv).

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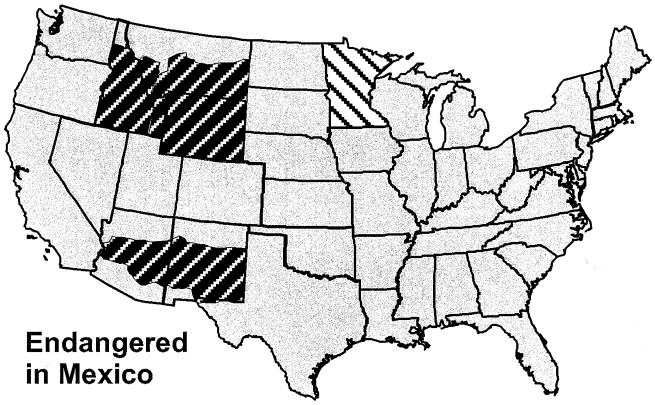
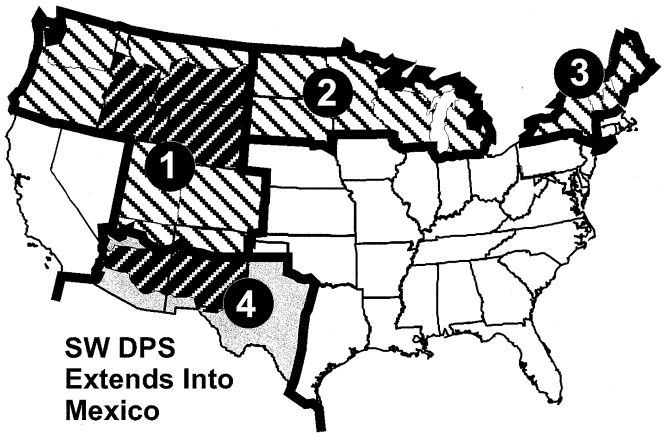
Map 1 - Previous Listing



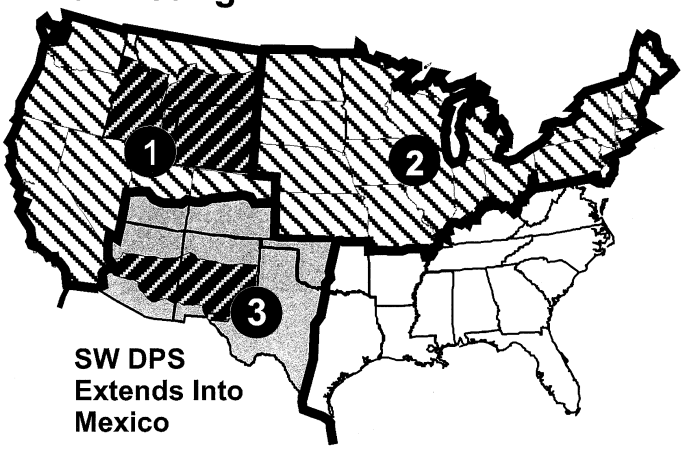
Map 2 - Proposed Listing

1. Western Distinct Population Segment
2. Western Great Lakes Distinct Population Segment
3. Northeastern Distinct Population Segment
4. Southwestern Distinct Population Segment (includes Mexico)



Map 3 - Final Listing

1. Western Distinct Population Segment
2. Eastern Distinct Population Segment
3. Southwestern Distinct Population Segment (includes Mexico)



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Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical 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 geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time we list a species.

Critical habitat was designated for the gray wolf in 1978 (43 FR 9607, March 9, 1978). That rule (50 CFR 17.95(a)) identifies Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1), as critical habitat. Wolf management zones 1, 2, and 3 comprise approximately 3,800 sq km (9,800 sq mi) in northeastern and north-central Minnesota. This rule does not affect those existing critical habitat designations.

The Endangered Species Act amendments of 1982 specified that, for any critical habitat designation for a species already listed as threatened or endangered at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, designation of critical habitat for the gray wolf is subject to the procedures for revisions to critical habitat. As such, it is not mandatory for the Service to designate critical habitat for the gray wolf. Section 4(a)(3)(B) provides that the Service ''may'' make revisions to critical habitat ''from time-to-time * * * as appropriate'' (16 U.S.C. 1533(a)(3)(B)). The Service has determined that there currently are no likely benefits to be derived from additional critical habitat designations, and it therefore is not appropriate to designate additional critical habitat. Wolf populations in both the Eastern and Western DPSs are at their numerical recovery goals as a result of past and current protections, but the currently designated critical habitat played a negligible role in wolf recovery. This is attributable to the fact that gray wolves are habitat generalists, and their numbers and range are not limited by a lack of suitable habitat or by any degradation of any essential habitat features. Designating critical habitat would be an inappropriate use of our limited listing funds if done for a species that is successfully recovering without such designation, and at a time when we have determined that it is more appropriate to reduce, rather than increase, the Federal protections for the species.

It should also be noted that the Act (section 10(j)(2)(C)(ii)) prohibits us from designating critical habitat for the nonessential experimental populations established in the Western and Southwestern DPSs. Furthermore, 50 CFR 424.12(h) prohibits the designation of critical habitat in foreign countries.

Special Regulations Under Section 4(d) for Threatened Species

General

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

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, we shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Section 4(d) also states that we may, by regulation, extend to threatened species the prohibitions provided for endangered species under section 9. The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31), except when a special regulation promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)).

With this final rule we are retaining the special regulation under section 4(d) of the Act that has been crucial to conserving the gray wolf in Minnesota, and we are implementing a similar special regulation to provide similar authority for lethal control of depredating wolves in most of the Eastern DPS.

We are also implementing a special regulation to assist in managing the rapidly expanding gray wolf population in the Western DPS. It applies to wolves outside the boundaries of the currently designated nonessential experimental population areas. The existing 10(j) special regulations for the currently designated nonessential experimental populations in Montana, Idaho, and Wyoming will remain in effect.

The existing special regulation for the gray wolf nonessential experimental population in portions of Arizona, New Mexico, and Texas also remains unchanged.

Continuation of Existing Special Regulations for Minnesota Gray Wolves

In 1978 we developed special regulations under section 4(d) of the Act for gray wolves in Minnesota in order to reduce the conflicts between gray wolves and livestock producers. These regulations were modified in 1985 (50 FR 50792; December 12, 1985; 50 CFR 17.40(d)) and remain unchanged. The regulations divided the State into five management zones and established the conditions under which certain State or Federal employees or agents may trap and kill wolves that are likely to continue preying on lawfully present domestic animals. The intent of these regulations was to provide an effective means to reduce the economic impact of livestock losses due to wolves. We believed that by reducing these impacts, private citizens would have less incentive to resort to illegal and excessive killing of problem wolves, and that consequently the recovery of the wolf would be hastened in Minnesota.

We operated this Minnesota Wolf Depredation Control Program from 1976 into 1986. Congressional action in 1986 transferred the Animal Damage Control Program to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS). In 1997 the Animal Damage Control program was renamed ''Wildlife Services.'' USDA/APHIS-Wildlife Services continues to operate the Wolf Depredation Control Program in Minnesota. This final rule will not change the special regulations that authorize these wolf depredation control activities in Minnesota.

New Special Regulations

Special regulations are being implemented for the gray wolf populations in the Western DPS and in much of the Eastern DPS (excluding Minnesota and States east of Ohio).

These special regulations are intended to be consistent with the conservation of the gray wolf in those areas by reducing actual and perceived conflicts with human activities, thus reducing the likelihood and extent of illegal killing of wolves.

In the case of the Western Gray Wolf DPS, the new section 4(d) regulation will apply only to wolves outside of the nonessential experimental population areas. The existing 1994 special regulations that apply to the two nonessential experimental population areas (50 CFR 17.84(i)) will remain in effect. The new special regulations finalized in this rule will allow similar, but increased, management flexibility for problem wolves in all areas of the Western DPS that are outside of the boundaries of the two experimental population areas. The existing experimental population special regulations will remain in effect.

New Western Gray Wolf DPS Special Regulations Under 4(d) (Refer to the following table for a comparison of these new regulations with the continuing regulations for the experimental population areas.)

The new 4(d) rule will expand the situations in which wolves that are in conflict with human activities may be taken by the Service or by private individuals. The Service is doing this to increase human tolerance of wolves in order to enhance the survival and recovery of the wolf population. The special rule for managing the threatened wolf population allows wolf control and management in a very similar manner to that allowed under the special regulations for the two nonessential experimental population areas in Montana, Idaho, and Wyoming. Those regulations have been in place since 1995, and have helped the wolf population grow rapidly to recovery levels with a low level of conflict with humans.

Any wolf that poses an immediate threat to human safety may be taken by anyone at that time and without any special permit. Any wolf that is a demonstrable but nonimmediate threat to human safety may be taken by us, by a Federal land management agency, by a State or tribal conservation agency, or by agents designated by these agencies. These types of taking are already generally permitted under 50 CFR 17.21(c) and 17.31(a) of the regulations implementing the Act, but are specifically mentioned again as being permitted by this rule for clarification. Such taking must be reported immediately (within 24 hours), and the wolf carcass must not be disturbed.

The new 4(d) rule allows private landowners and livestock grazing permittees to harass wolves in a noninjurious manner at any time and for any reason. In addition, landowners and grazing permittees on Federal lands, in certain conditions, may receive permits and training from the Service (or Service-authorized agencies or individuals) to intentionally harass wolves in a nonlethal but injurious manner, such as by rubber bullets or other Service-issued projectiles designed to be less-than-lethal to large mammals.

Under the final 4(d) rule, landowners on their private land may take a wolf that is observed in the act of physically attacking (biting, grasping, etc.) livestock (defined to include cattle, sheep, horses, mules, and livestock guarding or herding animals) and dogs. Such takings must be reported immediately, and evidence of a wolf attack must be present. Grazing permittees on Federal leases may receive a permit from us to take wolves in the act of attacking livestock or livestock herding or guarding animals after we have confirmed wolf depredation on their allotment.

In situations on private land where there have been repeated confirmed wolf depredations on livestock and dogs, private landowners may receive a permit from the Service to shoot a wolf or wolves on sight. The Service or Service-authorized agencies may remove wolves that attack livestock or other domestic animals.

In cases where the State or tribal wildlife management agency or the Service can reasonably demonstrate that wolf predation is having an unacceptable effect on big game herds, the Service can authorize wolf relocation to reduce predation by wolves.

The Service may also issue written permits for take of wolves as specified under 50 CFR 17.32, and we may also designate other agencies to take wolves under a variety of specific circumstances and conditions including for scientific purposes; to avoid conflict with human activities; to improve wolf survival and recovery; to aid or euthanize sick, injured, or orphaned individuals; to salvage specimens; and to aid law enforcement. The Service may also authorize agencies to take any wolf or wolf-like canid it determines is showing abnormal behavioral or physical characteristics.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Geographic area	This special rule applies only to wolves within the areas of two Nonessential Experimental Populations (NEP), which together include Wyoming, the southern portion of Montana, and Idaho south of Interstate 90.	This special rule will apply to any gray wolves that occur in those parts of the Western DPS (WDPS) that are outside of the NEP areas: Washington, Oregon, California, Nevada, northern Idaho, northern Montana, northern Utah, and northern Colorado.
Interagency Coordination (Sec. 7 consultation).	Federal agency consultation with the U.S. Fish and Wildlife Service on agency actions that may affect gray wolves is not required within the two NEPs, unless those actions are on lands of the National Park System or the National Wildlife Refuge System.	Federal agency consultation with the Service on agency actions that may affect gray wolves is required, but will not result in land-use restrictions on Federal land unless needed to avoid take at active den sites between April 1 and June 30, except in National Parks or National Wildlife Refuges where other restrictions may be applied.
Take in self defense	Any person may take a wolf in self defense or in defense of others.	Same as the current experimental population special rules.
Protection of human life and safety.	The Service, or agencies authorized by the Service, may promptly remove (that is, place in captivity or kill) any wolf determined by the Service or authorized agency to be a threat to human life or safety.	Similar to the current experimental population special rules, but applies to the Service, other Federal land management agencies, and State or tribal conservation agencies.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES—Continued

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Opportunistic harassment	Landowners and grazing allotment holders can opportunistically harass gray wolves in a noninjurious manner without a Service permit.	Same as the current experimental population special rules.
Intentional harassment Permits.	No specific provision for intentional harassment permits	The Service can issue a 90-day permit to private landowners or to livestock producers for use on public grazing allotments after verified persistent wolf activity on their private land or public grazing allotment; permit would allow intentional and potentially injurious, but nonlethal, harassment of wolves.
Taking wolves ''in the act'' on PRIVATE land.	Livestock producers on their private land may take a gray wolf in the act of killing, wounding, or biting livestock. Injured or dead livestock must be in evidence to verify the wolf attack.	Similar to the current experimental population special rules, but this provision is broadened to also apply to gray wolves attacking dogs and livestock herding and guarding animals.
Permits for taking persistent problem wolves ''in the act'' on PUBLIC land.	If six breeding pairs of wolves are established in an NEP area, livestock producers and permittees with current valid livestock grazing allotments on public land can get a 45-day permit from the Service or other agencies designated by the Service, to take gray wolves in the act of killing, wounding, or biting livestock. The Service must have verified previous attacks by wolves, and must have completed agency efforts to resolve the problem.	Same permits are available, but they can be issued regardless of the wolf population level. ''Livestock'' is defined to also include herding or guard animals. ''Public land'' is defined to include Federal land and any other public land designated in State and tribal wolf management plans.
Permits for additional taking by private citizens on their PRIVATE land for chronic wolf depredation.	No specific provision for such permits. However, see provision below for ''Permits for recovery actions that include take of gray wolves''.	If we confirm two separate depredation incidents on livestock or dogs on the subject private property or on an adjacent private property and we have confirmed that wolves are routinely present on the subject property and present a significant risk to livestock or dogs, a private landowner may receive a permit from the Service to take those wolves, under specified conditions.
Government take of PROBLEM WOLVES.	The Service or agencies designated by the Service may take wolves that attack livestock or that twice in a calendar year attack domestic animals other than livestock. When six or more breeding pairs are established in an NEP, lethal control of problem wolves or permanent placement in captivity may be authorized by the Service or agency designated by the Service. When five or fewer breeding pairs are established in an NEP, taking may be limited to nonlethal measures such as aversive conditioning, nonlethal control, and/or translocating wolves. If during depredation control activities on Federal or other public lands, prior to six breeding pairs becoming established in an NEP and prior to October 1, a female wolf having pups is captured, the female and her pups will be released at or near the site of capture. All problem wolves on private land, including female wolves with pups, may be removed (including lethal control) if continued depredation occurs. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity).	''Problem wolves'' is defined to have the same meaning: wolves that (1) attack livestock or (2) twice in a calendar year attack domestic animals other than livestock. Criteria to determine when take will be initiated are similar to those for the NEP: (1) evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, and (4) any previously specified animal husbandry practices have been implemented, if on public lands. No numerical threshold applies, so all control measures, including lethal control, can be used regardless of the number of breeding pairs in a State. No upper threshold of six breeding pairs limiting protection of females and their pups applies. Thus, females and their pups will be released if captured on public lands as defined above, prior to October 1, unless depredation continues. [Note: This is more restrictive than the experimental population regulations.] All problem wolves that attack domestic animals more than twice in a calendar year may be moved or removed from the wild, including females with pups.
Govt. translocation (capture and moving) of wolves to reduce impacts on wild ungulates.	States and tribes may capture and translocate wolves to other areas within the same NEP area, if the gray wolf predation is negatively impacting localized wild ungulate populations at an unacceptable level, as defined by the States and tribes. State/tribal wolf management plans must be approved by the Service before such movement of wolves may be conducted, and the Service must determine that such translocations will not inhibit wolf population growth toward recovery levels.	Similar to the current experimental population special rules, but moved wolves may be released to other areas within the Western DPS. Additionally: After 10 breeding pairs are established in the State, we, in cooperation with the States and tribes, may move wolves that we determine are impacting localized wild ungulate populations at unacceptable levels.
Incidental take	Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, and is accidental, unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking the wolf.	Similar to the current experimental population special rules.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES—Continued

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Permits for recovery actions that include take of gray wolves.	Available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).	Same as the current experimental population special rules.
Additional taking provisions for agency employees.	Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for: (A) Scientific purposes; (B) to avoid conflict with human activities; (C) to relocate a wolf within the NEP areas to improve its survival and recovery prospects; (D) to return wolves that have wandered outside of the NEP areas; (E) to aid or euthanize sick, injured, or orphaned wolves; (F) to salvage a dead specimen which may be used for scientific study; or (G) to aid in law enforcement investigations involving wolves.	Similar to the current experimental population special rules, except it has additional provisions that allow such take of wolves for ''disposing of a dead specimen''; and for ''preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.''
Land-use restrictions on Federal lands.	When five or fewer breeding pairs of wolves are in an experimental population area, temporary land-use restrictions may be employed on Federal public lands to control human disturbance around active wolf den sites. These restrictions may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites, and would only apply to Federal public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed on Federal public lands outside of National Parks or National Wildlife Refuges, unless that wolf population fails to maintain positive growth rates for two consecutive years.	Land-use restrictions may be employed for wolf recovery purposes on National Parks and National Wildlife Refuges. Between April 1 and June 30 land-use restrictions may be employed to prevent take of wolves at active den sites on Federal lands.

Under the new section 4(d) rule, landowners will be allowed to harass wolves from areas where potential conflicts are of greatest concern, such as private property and near grazing livestock. In addition to the authority for landowners and livestock producers to opportunistically harass gray wolves in a noninjurious manner (as already allowed by the current special regulations within the two experimental populations), the new 4(d) rule will allow us to issue temporary permits for deliberate harassment of wolves in an injurious manner under certain situations, as is also allowed under the experimental population rules. Harassment methods that will be allowed under this provision include rubber bullets and other specially designed less-than-lethal munitions. Since all such harassment would be nonlethal, and most is expected to be noninjurious to wolves, no effect on wolf population growth is expected to occur. This provision could make wolves more wary around people and human activity areas, reducing the potential for livestock depredations and subsequent agency control actions. Increased wariness and avoidance of humans could also possibly preclude the opportunity for people to illegally kill wolves. Fewer wolf depredations on livestock and pets should result from more focused and more unpleasant harassment of the problem wolves. Fewer depredations will result in fewer control actions, and consequently fewer wolves will be killed by management agencies. This provision allows us to work closely with the public to avoid conflicts between wolves and livestock or dogs, thereby reducing the need for wolf control. Because we will have to confirm persistent wolf activity, and each intentional harassment permit will contain the conditions under which such harassment could occur, there should be little potential for abuse of this management flexibility.

Under the new special regulation for the Western DPS, landowners will be allowed to take (kill or injure) wolves actually seen attacking their livestock on private land (as currently allowed by the existing special regulations for the two experimental populations). The new special regulation will also expand this provision so that it applies to wolves attacking livestock herding or guard animals or dogs on private land outside of the experimental areas. Furthermore, the new special regulation will allow us to issue permits to take wolves seen attacking livestock and livestock guard or herding animals on federally managed land. (The special regulations that will continue to apply to the two experimental population areas do not allow such permits to be issued for attacks on guard or herding animals, and do not allow such permits to be issued if there are fewer than six breeding pairs of wolves in the experimental population area.) Because such take has to be reported and confirmation of livestock attacks must be made by agency investigators, we anticipate that no additional significant wolf mortality will result from this provision. However, those few wolves that are killed will be animals with behavioral traits that were not conducive to the long-term survival and recovery of the wolf in the northern Rocky Mountains. The required confirmation process will greatly reduce the chances that wolves that have not attacked these types of domestic

animals will be killed under this provision. Once a depredating wolf is shot, no further control on the pack will be implemented by the agencies unless additional livestock are attacked. This could result in even fewer wolves being taken in agency control actions, because the wolf that is killed will be the individual most likely to have been involved in the actual attack on livestock.

The new special regulation will allow us or other agencies and the public to continue to take wolves in the rare event that they threaten human life or safety. While this is a highly unlikely situation, and one that is already addressed by the Act and the current special regulation, emphasizing the Act's provision to defend human life and safety should reduce the public's concern about human safety.

The new special regulation will allow government agencies to remove problem wolves (wolves that attack livestock or twice in a year attack other domestic animals) outside the experimental areas using lethal methods regardless of the number of breeding pairs present in the area. (The previous special regulations that will continue to apply within the two experimental population areas allow lethal methods only if there are six or more breeding pairs present in that experimental population area.)

Prior to October 1 of each year, the new special regulation will require the release of trapped female wolves with pups that are involved in livestock depredations for the first time, regardless of the number of breeding pairs on federally managed land. (The previous special regulations that will continue to apply within the two experimental population areas require the release of such female wolves with pups only if there are fewer than six breeding pairs present in that experimental population area.)

The new special regulation will allow us to issue permits for private landowners to take wolves on their private lands if we have determined that wolves are routinely present on that land and present a significant risk to livestock, herding or guard animals, and dogs. (The previous special regulations that will continue to apply within the two experimental areas have no specific provision for this type of permit to take wolves, but such permits can potentially be issued under 50 CFR 17.32.)

The new special regulation addresses public concerns about the presence of wolves disrupting traditional human uses of Federal land. Except for within National Parks and National Wildlife Refuges, the only potential restrictions on federally managed lands may be seasonal restrictions to avoid the take of wolves at active den sites. These seasonal restrictions will likely run from April 1 to June 30 of each year and apply to land within one mile of the active den site. Our experience since 1987 with managing wolves in the northern Rocky Mountains has shown that successful wolf recovery does not depend upon land-use restrictions due to the wolves' ability to thrive in a variety of land uses. We believe there is little, if any, need for land-use restrictions to protect wolves in most situations, with the possible exception of temporary restrictions around active den sites on federally managed lands. Additionally, the public is much more tolerant of wolves if restrictive government regulations do not result from the presence of wolves. While the threatened status of wolves will require Federal agencies to consult under section 7, the new special regulation will simplify that process by stating that no land-use restrictions are likely to be required except to protect wolves at active den sites on federally managed lands, as described above.

Other provisions of the new section 4(d) special regulation for the Western DPS are identical or very similar to the previous special regulations that will continue to apply to the two nonessential experimental populations in the northern U.S. Rocky Mountains.

Prior to this rule, any western gray wolves that lived outside of, or dispersed beyond, those experimental areas were protected under the Act as endangered gray wolves; thus, wolves in and around Glacier National Park in northwestern Montana were endangered wolves. In contrast, the new reclassification to threatened status and the new section 4(d) special regulation will apply a degree of greater management flexibility across the rest of the area defined as the Western DPS, which includes all of seven States and portions of two others.

In conclusion, the new 4(d) rule for the Western Gray Wolf DPS will continue to protect wolves from human persecution outside of the two experimental population areas, but will improve and expand the management options for problem wolves. By focusing management efforts on the occasional problem wolf, we believe that the public will become more tolerant of nondepredating wolves. On the basis of our experience with wolf recovery in Minnesota, Michigan, Wisconsin, Montana, Idaho, and Wyoming, we expect this increased public tolerance to result in fewer illegal killings of Western DPS wolves and more opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between wolves and humans. Overall, we believe that this new special regulation is consistent with the conservation of the gray wolf and that it will speed the species' recovery in the northern U.S. Rocky Mountains. Therefore, we find that this special rule is necessary and advisable to provide for the conservation of the Western DPS of the gray wolf.

New Special Regulations for Most of the Eastern DPS

The former endangered status of gray wolves restricted depredation control activities throughout the eastern half of the United States (except Minnesota) to capturing depredating wolves and releasing them at another location in the respective State. Wolves released in this manner may return to the vicinity of their capture and resume their depredating habits, begin pursuing domestic animals at their new location, or be killed by resident wolf packs in the release area. Thus, in order for translocation to have a reasonable probability of assisting wolf recovery, there must be unoccupied wolf habitat available within the State, but at a great distance from the depredation incident site, in order for the translocated wolf to survive and reproduce without causing additional depredation problems.

As the Michigan and Wisconsin wolf populations expand in number and range, the frequency of depredation incidents is increasing, yet there are fewer suitable release sites available. Releases of depredating wolves at marginal locations (that is, near existing wolf packs or too close to their capture site) are likely to fail. For example, a depredating wolf recently released into the Nicolet National Forest in Wisconsin at a location 46 miles from his initial capture had returned to within 23 miles of his capture location where he was mistaken for a coyote and shot only 13 days after his release. Further compounding the problem of successfully moving and releasing depredating wolves is the local opposition that has recently arisen to such releases in some Wisconsin counties, with at least one county board passing a resolution opposing releases by the DNR.

Similar problems with relocating depredating wolves have occurred in northwestern Montana. Between 1987 and the end of 2001, 117 wolves were relocated because of conflicts with livestock. Few of these wolves contributed toward wolf recovery and many often caused additional livestock depredations or did not survive long

enough to reproduce. A review of wolf relocation as a means of reducing depredations on livestock in northwestern Montana concluded that relocation should be discontinued and that both livestock losses and depredation control costs could be reduced by killing, instead of relocating, depredating wolves (63 FR 20212, April 23, 1998; Bangs 1998; Bangs *et al.* 1998).

This new special regulation allows us, the Michigan and Wisconsin DNRs, the wildlife management agencies of North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana, and Ohio, or tribes within these States, or the designated agents of these agencies and tribes to carry out the full spectrum of depredation control actions, from nonlethal opportunistic harassment to lethal control of depredating wolves. The restrictions for lethal depredation control actions will be similar to those used for the Minnesota wolf depredation control program since 1985: (1) Wolf depredation on lawfully present domestic animals must be verified, (2) the depredation is likely to be repeated, (3) the taking must occur within one mile of the depredation site in Michigan and Wisconsin, and within 4 miles of the depredation site in other area of the Eastern DPS that are west of Pennsylvania, (4) taking, wolf handling, and euthanizing must be carried out in a humane manner, which includes the use of steel leghold traps, and (5) any young of the year trapped before August 1 must be released.

Lethal depredation control has been successful in reducing conflicts between the recovering wolf population and domestic animals in Minnesota. It resolves the immediate depredation problem without the removal of excessive numbers of wolves, and avoids removing any wolves when the depredation was not verified as being caused by wolves or is not likely to be repeated. It is significantly less expensive, less labor-intensive, and more effective than translocating such problem wolves, and thus is more appropriate for the rapidly expanding wolf populations that now exist in Michigan and Wisconsin.

Based upon Minnesota wolf depredation control data from the early 1980s when the wolf population was probably less than 1,500 animals, we estimate that a maximum of about 2 to 3 percent of Wisconsin and Michigan wolves will be taken annually under the provisions of this special regulation. At current population levels this will be about 6 to 9 wolves per State. This level of take should not appreciably affect the wolf population or its continued expansion in either of these States. As their wolf populations already exceed the Federal numerical delisting criterion, this take will have no effect on the recovery of wolves in the Eastern DPS. The level and effects of this take will be closely monitored by continuing the annual monitoring of wolf populations in these States and the required reporting of the lethal take within 15 days under this special regulation.

These new depredation control activities will be limited to an area within one mile of the depredation site in Wisconsin and Michigan. Because wolf pack territories are large (in Wisconsin and Michigan they range from 52 to 518 sq km (20 to 200 sq mi), and the locations of Wisconsin and Michigan wolf packs are much more precisely known (due primarily to the high percentage of radio-tracked packs in these States) than is the case for Minnesota wolf packs, it will be possible for depredation control actions to be directed at only the depredating pack. Thus, the one-mile limit is sufficiently large to enable depredation control trappers to focus their trapping within the activity areas of the target pack without being so large that it results in a significant risk of accidentally trapping wolves from nearby nondepredating packs.

The situation in North Dakota and South Dakota is quite different from that in Michigan or Wisconsin. Wolves that appear in North Dakota and South Dakota are dispersing individuals from Minnesota and Canada, or rarely may be from a pair or small pack along North Dakota's border with Canada. None of our recovery plans or recovery programs recommends actions to promote gray wolf restoration in either of these two States, and we do not believe the Act requires or encourages such recovery actions. We also recognize that, due to the more open landscape of these States, and the high likelihood that dispersing wolves will encounter livestock, wolves are more likely to become involved in depredations on domestic animals. Therefore, we believe we should provide a mechanism for prompt control of depredating wolves in these States. Because there are very few or no established wolf packs in these States, and there are very few wolves dispersing into these States, we believe there is minimal risk, when taking control actions under this special regulation, of accidentally trapping or shooting wolves from a nearby nondepredating pack or dispersers that are not involved in the depredation. For this reason, as well as recognition that the much more open landscape of North Dakota and South Dakota means that depredating wolves are likely to travel a greater distance from the depredation site to secure cover, we will allow lethal depredation control actions to be undertaken up to 4 miles from the depredation site.

The other Eastern DPS States that are west of Pennsylvania, and thus are subject to this special regulation, have had few reports of wolves in the last 100 years. The number of gray wolves that will be taken under its provisions will be very small, and will be of no consequence to ongoing wolf recovery programs. In the event that a gray wolf disperses into one of these States and attacks domestic animals, it will be important for the State or tribe to have this lethal control authority, because most of these areas have no suitable locations to release a depredating wolf. Due to the extremely low probability that a nondepredating wolf will be mistakenly taken instead of the depredating wolf, we are applying the 4-mile limit in these States, as well.

Therefore, because of the anticipated low level of additional mortality that will result from this special regulation, and the likely larger increase in illegal wolf killing and loss of public support for wolf recovery that we expect to be prevented by this 4(d) rule, we find that this special rule is necessary and advisable to provide for the conservation of the Eastern DPS of the gray wolf.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Most of these measures have already been successfully applied to gray wolves in the conterminous 48 States.

Under this final rule, the protections of the Act will continue to apply to the gray wolves in the endangered Southwestern Gray Wolf DPS, to the threatened Eastern and Western Gray Wolf DPSs, and to the gray wolves in the three nonessential experimental populations. The protections of the Act are removed only from parts or all of 16 States where gray wolves did not historically occur. This final rule does not modify or withdraw the existing

special regulations or the nonessential experimental population designations for the reintroduced gray wolf populations in Idaho, Montana, Wyoming, Arizona, New Mexico, and Texas, nor does it make any changes to the threatened classification and existing section 4(d) special regulation for gray wolves in Minnesota. Similarly, the existing critical habitat designations for portions of Minnesota and Michigan will remain unchanged, and will continue to be considered during consultations with other Federal agencies under section 7 of the Act. This final rule does not affect the listing or protection of the red wolf (*Canis rufus*).

The protection required of Federal agencies and the prohibitions against taking and harm are discussed in the *Summary of Factors Affecting the Species* section, factor D, *The adequacy or inadequacy of existing regulatory mechanisms*, above.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

Federal agency actions that may require consultation or conferencing, as described in the preceding paragraph, include activities by the U.S. Forest Service, the National Park Service, the U.S. Geological Survey, USDA/APHIS-Wildlife Services, the Bureau of Land Management, the U.S. Department of Transportation, the U.S. Environmental Protection Agency, and activities that we may undertake.

However, under section 10(j)(2)(C) of the Act, for those three areas currently designated as nonessential experimental populations in Montana, Idaho, Wyoming, Arizona, New Mexico, and Texas, for the purpose of interagency consultation under section 7 of the Act the gray wolf will continue to be considered a species proposed for listing under the Act, except where the species occurs on an area within the National Wildlife Refuge System or the National Park System. For all other purposes of the Act, gray wolves that are currently designated as experimental populations shall continue to be treated as a threatened species. Furthermore, the existing special regulations found in 50 CFR 17.84(i) and 17.84(k) regarding the taking of wolves depredating on livestock in these experimental population areas continue to apply.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened wildlife. The prohibitions codified at 50 CFR 17.21 and 17.31 in part make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. Additionally, as discussed above, special regulations promulgated under sections 4(d) and 10(j) of the Act provide additional exceptions to these general prohibitions for the gray wolf.

It is our policy (59 FR 34272; July 1, 1994) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that we believe could potentially harm or kill the gray wolf in the area where it will remain listed as threatened or endangered and may result in a violation of section 9 include, but are not limited to:

(1) Taking of gray wolves by any means or manner not authorized under the provisions of the existing special regulation established for the designated nonessential experimental population in Arizona, New Mexico, and Texas as long as that designation and special regulation remain in effect;

(2) Taking captive Southwestern (Mexican) gray wolves unless such taking results from implementation of husbandry protocols approved under the Mexican Wolf Species Survival Plan or are otherwise approved or permitted by the Service;

(3) Taking of gray wolves within the Western DPS in a manner not authorized under the provisions of the 4(d) special regulations finalized by this document, or in a manner not authorized under the existing experimental population regulations which will continue to apply to gray wolves in Wyoming and in parts of Idaho and Montana;

(4) Taking of gray wolves within the Eastern DPS in a manner not authorized in the existing section 4(d) special regulation for Minnesota, in the section 4(d) special regulation finalized by this document for other States in this DPS that are west of Pennsylvania, or in 50 CFR 17.31 for the Eastern DPS States east of Ohio;

(5) Intentional killing of a live-trapped wild canid that is demonstrably too large to be a coyote (that is, greater than 27 kg (60 lb)) in the Northeastern States that are included in the Eastern DPS; or

(6) Killing or injuring of, or engaging in the interstate commerce of, captive gray wolves which originated from, or whose ancestors originated from, the areas included within the Western, Eastern, or Southwestern DPSs, unless authorized in a Service permit.

We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Taking of a gray wolf in defense of human life, or a taking by designated agency personnel in response to a demonstrable, but nonimmediate threat to human safety;

(2) Taking of wild gray wolves in the 16–State area where we have delisted the gray wolf;

(3) Taking of gray wolves under the provisions of the existing special regulations established for the three designated nonessential experimental populations in Arizona, New Mexico, Texas, Wyoming, Idaho, and Montana as long as those designations and special regulations remain in effect;

(4) Taking of gray wolves under the provisions of the special regulations under section 4(d) of the Act, as finalized at this time for threatened gray wolves in the Western DPS or the Eastern Gray Wolf DPS States which are west of Pennsylvania and excluding Minnesota;

(5) Taking of gray wolves under the provisions of the existing special regulation at 50 CFR 17.40(d) for Minnesota wolves; or

(6) taking of captive Southwestern (Mexican) gray wolves in accordance with husbandry protocols approved under the Mexican Wolf Species Survival Plan or other approvals or permits issued by the Service.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 13, 17.22, 17.23, and 17.32. For endangered species such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship. For threatened species such permits are also available for zoological exhibition, educational purposes, and/or for special purposes consistent with the purposes of the Act, but not for economic hardship.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the nearest regional or Ecological Services field office of the Service. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to any Service Regional Office or to the Washington headquarters office. The location, address, and phone number of the nearest regional or Ecological Services field office may be obtained by calling us at 703–358–2171 or by using our World Wide Web site at: *http://www.fws.gov/where/index.html.*

This final rule is not an irreversible action on our part. Reclassifying either or both of the Eastern and Western DPSs back to endangered status is possible, and will be considered, should changes occur that alter the species' status or significantly increase the threats to the survival of either of these DPSs. Because changes in status or increases in threats might occur in a number of ways, it is unwise at this point to specify criteria that would trigger a reclassification proposal.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness

This rule was subject to Office of Management and Budget review under Executive Order 12866. Because this regulation is not expected to have a significant economic effect, only a qualitative assessment of the potential costs and benefits is included. Because of the added management flexibility provided by the 4(d) regulations, this regulation is expected to result in a small economic gain to some livestock producers within the wolf range.

Currently the vast majority of wolves that occur in the western Great Lakes area are found in the State of Minnesota where they are listed as threatened. A special regulation exists for Minnesota wolves that allows the Service, the MN DNR, other designated agencies, and their agents to manage wolves to ensure minimal economic impact. That current special regulation allows some direct ''take'' of wolves. A State program compensates livestock producers up to full market value if they suffer confirmed livestock losses by wolves. The value of the confirmed livestock losses amounted to an annual average of about $64,000 over the last five years (Paul 2001). Because this new regulation does not affect the existing special regulations for Minnesota wolves, there will be no resulting economic effect on livestock producers or other economic activities in Minnesota.

This regulation reclassifies wolves in Michigan and Wisconsin from endangered to threatened and provides special regulations similar to those already existing for Minnesota, as described above. Thus, specified State, tribal, and Federal agencies and their designated agents will be allowed to kill wolves that have been verified as killing or attacking domestic animals. Under the normal protections of the Act, that is, without the benefit of these special regulations for Michigan and Wisconsin, permits would be required. This special regulation benefits the small percentage of livestock producers in wolf range in Michigan and Wisconsin that experience wolf attacks on their animals. Since only about 1.2 percent of livestock producers in nearby Minnesota, where the wolf population is much greater (Minnesota contains more than 2,500 wolves, while Wisconsin and Michigan have 323 and 278 wolves, respectively), are adversely affected annually by wolves, the potential beneficial effect to livestock producers in Michigan and Wisconsin is small, but it may be important to a few producers. In addition, State programs in Michigan and Wisconsin compensate livestock producers if they suffer confirmed livestock losses by wolves. In Wisconsin, compensation is paid at full market value. Until recently, MI DNR provided partial compensation, but now is paying full compensation with the assistance of the International Wolf Center, Defenders of Wildlife, and other private funding sources. The net effect of the reclassification and 4(d) rule to livestock producers in Michigan and Wisconsin is that the control of depredating wolves will become more efficient and effective, thus reducing the economic burden of livestock producers resulting from wolf recovery in those States. Similar positive, but geographically scattered and minor, economic benefits will occur for livestock producers in the other Eastern DPS States west of Pennsylvania where this new 4(d) rule will also apply.

The majority of wolves in the West are protected under nonessential experimental population designations that cover Wyoming, most of Idaho, and southern Montana and that treat wolves as threatened species. A smaller, but naturally occurring population of about 84 wolves is found in northwestern Montana. The wolves with the nonessential experimental population designations were reintroduced into these States from Canada. Special regulations exist for these experimental populations that allow government employees and designated agents, as well as livestock producers, to take problem wolves. Because this final rule does not change the nonessential experimental designation or associated special regulations, it will have no economic impact on livestock producers or other entities in these areas. However, the naturally occurring wolves in northwestern Montana (outside of the nonessential experimental population areas) and wolves that may occur in other western States are now reclassified from endangered to threatened status. Under normal protections of the Act, that is, without the benefit of special regulations hereby put into place for the western States not included in the nonessential experimental designation, permits would be required for nearly all forms of take of these wolves. For example, prior to this final rule a private landowner on his or her own land in northwestern Montana could not take a wolf in the act of attacking livestock. This final rule allows such take without a permit. The reduction of the restrictions on taking problem wolves will make their control easier and more effective, thus reducing the economic losses that result from wolf depredation on livestock and guard animals and dogs. Furthermore, a private program compensates livestock producers if they suffer confirmed livestock losses by wolves. Since 1996, average compensation for livestock losses has been slightly over $10,000 in each recovery area per year. The potential effect on livestock producers in western States outside of the experimental population is small, but more flexible wolf management will be entirely beneficial to their operation.

We have delisted the gray wolf in all or parts of 16 States in this final rule, because this area is outside of the historical range of the gray wolf. These areas currently contain no wolves, and

they should not have been included in the original listing of the species. Current regulations that protect wolves there are unnecessary and inappropriate. Livestock producers and other economic activities in these States have not been affected by the gray wolf and will not be affected by the actions in this final rule, because we are simply removing the current regulations which have no effect on landowners.

a. This regulation does not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. As explained above, this regulation will result in only minor positive economic effects for a small percentage of livestock producers.

b. This regulation will not create inconsistencies with other agencies' actions. This regulation reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of Federal, State, and tribal agencies.

c. This regulation will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This regulation raises novel legal or policy issues, and for this reason, OMB has reviewed this rule.

This regulation will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As stated above, this regulation will result in minor positive economic effects for a very small percentage of livestock producers. Only 1.2 percent of the livestock producers are affected annually in Minnesota by the preexisting regulations, and a smaller number are expected to be affected by these new regulations in the other States.

This regulation will not be a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

a. This regulation will not produce an annual economic effect of $100 million. The majority of livestock producers within the range of the wolf are small family-owned dairies or ranches and the total number of livestock producers that may be affected by wolves is small. (For example, only about 1.2 percent of livestock producers in Minnesota is affected annually by wolves where the largest wolf population, by far, exists.) The finalized take regulations will further reduce the effect that wolves will have on individual livestock producers by reducing or eliminating permit requirements. Compensation programs are also in place to offset losses to individual livestock producers. Thus, even if livestock producers affected are small businesses, their combined economic effects will be minimal and the effects are a benefit to small business.

b. This regulation will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This regulation will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. As stated above, this regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

b. This regulation will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This regulation will not impose any additional wolf management or protection requirements on the States or other entities.

Takings Implications Assessment

In accordance with Executive Order 12630, this regulation will not have significant implications concerning taking of private property by the Federal Government. This regulation will reduce regulatory restrictions on private lands and, as stated above, will result in minor positive economic effects for a small percentage of livestock producers.

Federalism Assessment

In accordance with Executive Order 13132, this regulation will not have significant Federalism effects. This regulation will not have a substantial direct effect on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government.

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 512 DM 2, we have coordinated this rule with the affected tribes. Throughout development of this rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. We fully considered all of their comments on the proposed gray wolf reclassification and delisting submitted during the public comment period and have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes.

Civil Justice Reform

In accordance with Executive Order 12988, this regulation does not unduly burden the judicial system.

Paperwork Reduction Act

This regulation does not contain any new collections of information other than those permit application forms already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094.

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 Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

National Environmental Policy Act

We have analyzed this rulemaking in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the

Federal Register on October 25, 1983 (48 FR 49244).

Section 7 Consultation

We do not need to complete a consultation under section 7 of the Act for this rulemaking. The actions of listing, delisting, or reclassifying species under the Act are not subject to the requirements of section 7 of the Act. An intra-Service consultation is completed prior to the implementation of recovery or permitting actions for listed species.

References Cited

A complete list of all references cited in this document is available upon request from the U.S. Fish and Wildlife Service Region 3 Office at Ft. Snelling, Minnesota (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this rule is Ronald Refsnider, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota Regional Office (see **ADDRESSES** section). Substantial contributions were also made by Service employees Michael Amaral (Concord, New Hampshire), Ed Bangs (Helena, Montana), Brian Kelly (Albuquerque, New Mexico), and Paul Nickerson (Hadley, Massachusetts).

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulation, as set forth below:

PART 17—[AMENDED]

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

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

■ 2. Section 17.11(h) is amended by removing the first two entries for the gray wolf (*Canis lupus*) under MAMMALS in the List of Endangered and Threatened Wildlife and adding in their place the following three entries, while retaining the current final two entries for the gray wolf, which designate nonessential experimental populations in Wyoming, Idaho, Montana, Arizona, New Mexico, and Texas:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	Southwestern Distinct Population Segment-U.S.A. (AZ, NM, CO south of Interstate Highway 70, UT south of U.S. Highway 50, OK and TX, except those parts of OK and TX east of Interstate Highway 35; except where listed as an experimental population); Mexico.	E	1, 6, 13, 15, 35, 631, 735.	NA	NA
Do	do	do	Eastern Distinct Population Segment—U.S.A. (CT, IA, IL, IN, KS, MA, ME, MI, MN, MO, ND, NE, NH, NJ, NY, OH, PA, RI, SD, VT, and WI)	T	1, 6, 13, 15, 35,735.	17.95(a)	17.40(d) 17.40(o)
Do	do	do	Western Distinct Population Segment—U.S.A. (CA, ID, MT, NV, OR, WA, WY, UT north of U.S. Highway 50, and CO north of Interstate Highway 70, except where listed as an experimental population).	T	1, 6, 13, 15, 35, 561, 562, 735.	NA	17.40(n)
*	*	*	*	*	*		*

■ 3. The Service amends § 17.40 by adding new paragraphs (n) and (o) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(n) Gray wolf (*Canis lupus*) in Washington, Oregon, California, Idaho, Nevada, Montana, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70, except where listed as an experimental population.

(1) *Application of this special rule to the experimental populations located in Idaho, Montana, and Wyoming.* Paragraphs (n) (2) through (6) of this section do not apply to gray wolves within the experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i).

(2) *Definitions of terms used in paragraph (n) of this section.*

(i) *Active den site.* A den or a specific aboveground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

(ii) *Breeding pair.* An adult male and an adult female wolf that, during the previous breeding season, have produced at least two pups that survived until December 31 of the year of their birth.

(iii) *Domestic animals.* Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

(iv) *Livestock.* Cattle, sheep, horses, mules, and herding or guard animals (llamas, donkeys, and certain special-use breeds of dogs commonly used for guarding or herding livestock) or as otherwise defined in State and tribal wolf management plans as approved by the Service. This excludes dogs that are

not being used for livestock guarding or herding.

(v) *Noninjurious.* Does not cause either temporary or permanent physical damage or death.

(vi) *Opportunistic harassment.* Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

(vii) *Problem wolves.* Wolves that attack livestock, or wolves that twice in a calendar year attack domestic animals other than livestock.

(viii) *Public land.* Federal land and any other public land designated in State and tribal wolf management plans as approved by the Service.

(ix) *Remove.* Place in captivity or kill or release in another location.

(x) *Wounded.* Exhibiting torn flesh and bleeding or other evidence of physical damage caused by a wolf bite.

(3) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described in paragraph (n) of this section, are allowed: opportunistic harassment; intentional harassment; taking on private land; taking on public land; taking in response to impacts on wild ungulates; taking in defense of human life; taking to protect human safety; taking by government agents to remove problem wolves; incidental take; taking under permits; and taking per authorizations for agency employees. Other than as expressly provided in this rule, all the prohibitions of § 17.31(a) and (b) apply, and all other take activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (n) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Landowners on their own land and livestock producers or permittees who are legally using public land under valid livestock grazing allotments may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent have confirmed persistent wolf activity on privately owned land or on a public land grazing allotment, we may, pursuant to § 17.32, issue a 90-day permit, with appropriate conditions, to any landowner to harass wolves in a potentially injurious manner (such as by projectiles designed to be nonlethal to larger mammals). The harassment must occur as specifically identified in the Service permit.

(iii) *Taking by landowners on private land.* Landowners may take wolves on privately owned land in the following two additional circumstances:

(A) Any landowner may take a gray wolf that is in the act of biting, wounding, or killing livestock or dogs, provided that the landowner provides evidence of animal(s) freshly (less than 24 hours) wounded or killed by wolves, and we or our designated agent are able to confirm that the animal(s) were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(B) A private landowner may be issued a limited duration permit pursuant to § 17.32 to take a gray wolf on the landowner's private land if:

(1) This private property or an adjacent private property has had at least two depredations by wolves on livestock or dogs that have been confirmed by us or our designated agent; and

(2) We or our designated agent have determined that wolves are routinely present on that private property and present a significant risk to the health and safety of livestock or dogs. The landowner must conduct the take in compliance with the permit issued by the Service.

(iv) *Take on public land.* Under the authority of § 17.32, we may issue permits to take gray wolves under certain circumstances to livestock producers or permittees who are legally using public land under valid livestock grazing allotments. The permits, which may be valid for up to 45 days, can allow the take of a gray wolf that is in the act of killing, wounding, or biting livestock, after we or our designated agent have confirmed that wolves have previously wounded or killed livestock, and agency efforts to resolve the problem have been completed and were ineffective. We or our designated agent will investigate and determine if the previously wounded or killed livestock were wounded or killed by wolves. There must be evidence of livestock freshly wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(v) *Take in response to wild ungulate impacts.* If wolves are causing unacceptable impacts to wild ungulate populations, a State or tribe may capture and move wolves to other areas within the States identified in paragraph (n) of this section or experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i). In order for this provision to apply, the States or tribes must define in their wolf management plan such unacceptable impacts, describe how they will be measured, and identify possible mitigation measures. Before wolves can be captured and moved, we must approve these plans and determine that such actions will not inhibit wolf population growth toward recovery levels. In addition, if, after 10 breeding pairs are established in the State, we determine that wolves are causing unacceptable impacts to wild ungulate populations, we may, in cooperation with the appropriate State fish and game agencies or tribes, capture and move wolves to other areas within the States identified in paragraph (n) of this section or experimental populations areas in Idaho, Montana, and Wyoming.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or a Federal land management agency or a State or tribal conservation agency may promptly remove any wolf that we or our designated agent determines to be a demonstrable but nonimmediate threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent.* We or our designated agent may carry out aversive conditioning, nonlethal control, relocation, permanent placement in captivity, or lethal control of problem wolves. If nonlethal depredation control activities occurring on public lands result in the capture, prior to October 1, of a female wolf showing signs that she is still raising pups of the year (*e.g.*, evidence of lactation, recent sightings with pups), whether or not she is captured with her pups, then she and her pups may be released at or near the site of capture. Female wolves with pups may be removed if continued depredation occurs. Problem wolves that depredate on domestic animals more than twice in a calendar year, including female wolves with pups regardless of whether on public or private lands, may be moved or removed from the wild. To determine the presence of problem wolves, we or our agents will consider all of the following:

(A) Evidence of wounded livestock or other domestic animals or remains of a carcass that shows that the injury or death was caused by wolves;

(B) The likelihood that additional losses may occur if no control action is taken;

(C) Any evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that, on public lands, if animal husbandry practices were previously identified in existing approved allotment plans and annual operating plans for allotments, they were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take was accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such taking. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such taking; we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional taking authorizations for agency employees.* When acting in the course of official duties, any employee of the Service or appropriate Federal, State, or tribal agency, who is designated as an agent in writing for such purposes by the Service, may take a wolf or wolf-like canid for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (n)(6) of this section and specimens may be retained or disposed of only in accordance with directions from the Service:

(A) Scientific purposes;

(B) Avoiding conflict with human activities;

(C) Improving wolf survival and recovery prospects;

(D) Aiding or euthanizing sick, injured, or orphaned wolves;

(E) Disposing of a dead specimen;

(F) Salvaging a dead specimen that may be used for scientific study;

(G) Aiding in law enforcement investigations involving wolves; or

(H) Preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.

(4) *Prohibited take of gray wolves.*

(i) Any manner of take not described under paragraph (n)(3) of this section.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the State of origin taken in violation of the regulations in paragraph (n) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Act.

(iii) In addition to the offenses defined in paragraph (n) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, will be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (n) of this section or in a permit issued under § 17.32, any taking of a gray wolf must be reported to the Service within 24 hours. We will allow additional reasonable time if access to the site is limited. Report wolf takings, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 N. Park, #320, Helena, MT 59601; 406–449–5225 extension 204; facsimile 406–449–5339), or a Service-designated representative of another Federal, State, or tribal agency. Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(o) Gray wolf (*Canis lupus*) in North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

(1) *Definitions of terms used in paragraph (o) of this section.*

(i) *Domestic animals.* Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets.

(ii) *Livestock.* Cattle, sheep, horses, and mules or as otherwise defined in State and tribal wolf management plans.

(2) *Allowable forms of take of gray wolves.* The following activities, in certain circumstances as described below, are allowed: Take in defense of human life; take to protect human safety; take to aid, salvage, or dispose; take for depredation control; take under cooperative agreements; and take under permit. As stated in § 17.31(c), the provisions of this paragraph (o) contain all the applicable take prohibitions and exceptions; all other take activities in these States are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (o) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (o)(4) of this section.

(i) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(ii) *Take to protect human safety.* We or a Federal land management agency or a State or tribal conservation agency, or an agent of one of these agencies who is designated in writing for such purpose, may promptly remove any wolf that the agency determines to be a demonstrable but nonimmediate threat to human life or safety.

(iii) *Allowable take for aiding, salvaging, or disposing of specimens.* When acting in the course of official duties, any authorized employee or agent of the Service, any other Federal land management agency or the wildlife conservation agency of a State or of a federally recognized Native American tribe, who is designated by his/her agency for such purposes, may take a gray wolf in the person's area of jurisdiction without a Federal permit if such action is necessary for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (o)(4) of this section, and specimens may be retained or disposed of only in accordance with directions from the Service:

(A) Aiding a sick, injured, or orphaned specimen;

(B) Disposing of a dead specimen; or

(C) Salvaging a dead specimen that may be useful for scientific study or for traditional cultural purposes by Native American tribes.

(iv) *Allowable take for depredation control.* When acting in the course of official duties, any authorized employee or agent of the Service, of the wildlife conservation agency of a State, or of a federally recognized Native American

tribe, who is designated by his/her agency for such purposes, may take a gray wolf or wolves within the person's State or, in the case of a tribal employee, within that person's Reservation boundaries, in response to depredation by a gray wolf on lawfully present livestock or domestic animals. However, such taking must be preceded by a determination by one of the agencies listed in paragraph (o) of this section that the depredation was likely to have been caused by a gray wolf and depredation at the site is likely to continue in the absence of a taking. In addition, such taking must be performed in a humane manner and occur within 1 mile of the place where the depredation occurred if in Michigan or Wisconsin, and within 4 miles of the place where the depredation occurred if in the remaining area covered by paragraph (o) of this section. Any young of the year taken by trapping on or before August 1 of that year must be released. Any take for depredation control must reported to the Service within 15 days as outlined in paragraph (o)(4) of this section. The specimen may be retained or disposed of only in accordance with directions from the Service.

(v) *Take under section 6 cooperative agreements.* When acting in the course of official duties, any authorized employee or agent of the State wildlife conservation agencies in the area covered by paragraph (o) of this section, who is designated by his/her agency for such purposes under a cooperative agreement under section 6 of the Act, may take a gray wolf in his/her respective State to carry out scientific research or conservation programs. Such takings must be reported to the Service as specified in the reporting provisions of the cooperative agreement.

(vi) *Take under permit.* Any person who has a permit under § 17.32 may carry out activities as specified by the permit with regard to gray wolves in the area covered by paragraph (o) of this section.

(3) *Prohibited take of gray wolves.*

(i) Any form of taking not described in paragraph (o)(2) of this section is prohibited.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under§ 17.32, no person may sell or offer for sale in interstate commerce, import or export, or, in the course of a commercial activity, transport or receive any gray wolves from the States, or portions thereof, covered by paragraph (o) of this section.

(iii) In addition to the offenses defined in paragraph (o) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in the area covered by paragraph (o) of this section.

(4) *Reporting requirements.* Except as otherwise specified in paragraph (o) of this section or in a permit issued under § 17.32, any taking must be reported to the Service within 24 hours. Report wolf takings in North Dakota, South Dakota, Nebraska, and Kansas to 303–236–7540, and in Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio to 612–713–5320, or a Service-designated representative of another Federal, State, or tribal agency. (Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337.) Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(5) *Take regulations for States in the Eastern Gray Wolf Distinct Population Segment (DPS) not covered by this paragraph (o).* This special rule does not apply to the States of Minnesota, Pennsylvania, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and Maine. While these States are included in the Eastern DPS, this special regulation does not apply to the entire DPS, and it specifically does not apply to these 10 States. Gray wolves in these States, other than Minnesota, are covered by the prohibitions of § 17.31(a) and (b), which apply to all threatened species that are not subject to a special regulation. Gray wolves in Minnesota are covered by a separate special regulation in paragraph (d) of this section.

Dated: March 17, 2003.

Steve Williams,

Director.

[FR Doc. 03–7018 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ03

Endangered and Threatened Wildlife and Plants; Removing the Eastern Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces our intention to conduct rulemaking under the Endangered Species Act of 1973, as amended (Act), to remove the Eastern Distinct Population Segment (DPS) of gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. Specifically, we intend to propose to delist the gray wolf in the Midwest and Northeastern United States where it is presently listed. If this proposal is finalized, the gray wolf would be delisted in the Eastern Gray Wolf DPS, existing special regulations established under section 4(d) of the Act for the Eastern DPS would be abolished, and future management of this species would be conducted by the appropriate State and tribal wildlife agencies. As published concurrently in this **Federal Register**, the Service also intends to initiate proposed rulemakings to delist gray wolves in the Western Gray Wolf DPS and to remove all nonessential experimental population designations in the northern U.S. Rocky Mountains. Neither proposed rulemaking would affect the protection currently afforded by the Act to gray wolves in the Southwestern DPS, the nonessential experimental population in the Southwest DPS, or the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: We are not seeking comments on this planned proposed rulemaking at this time. A public comment period, including the opportunity for public hearings and informational meetings, will follow the publication of the proposed rule to remove (or delist) the Eastern Gray Wolf DPS.

ADDRESSES: Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056l; Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, or the general gray wolf electronic mail address—*GRAYWOLFMAIL@FWS.GOV.* Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

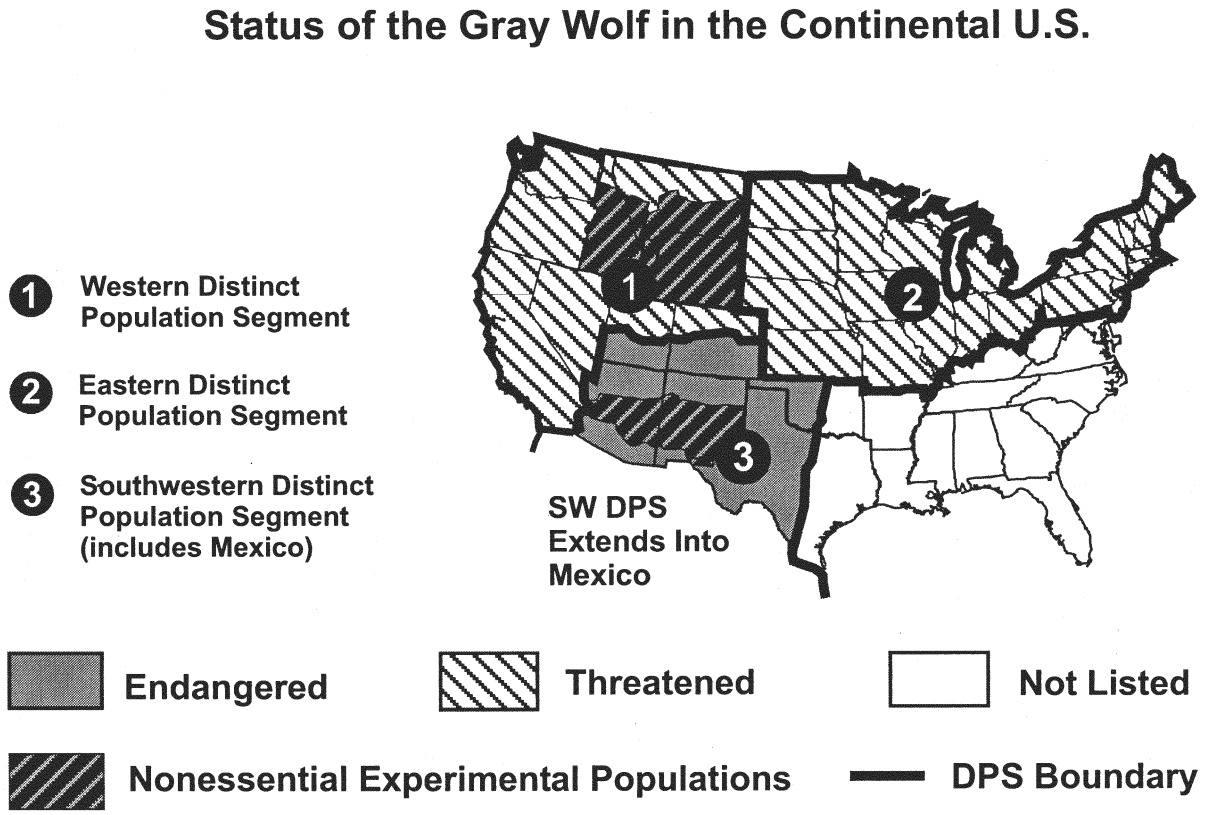
FOR FURTHER INFORMATION CONTACT: Ron Refsnider, phone 612–713–5346. Additional information on gray wolf recovery in the Eastern DPS is available on our World Wide Web site at *http://midwest.fws.gov/wolf.* Direct all questions or requests for additional information to the Service (*see* **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Published concurrently in today's **Federal Register** is our final rule establishing three Distinct Population Segments (DPSs) of gray wolves within the conterminous 48 States in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) and reclassifying two of these DPSs based on the status of current wolf populations within these DPSs. The Eastern Gray Wolf DPS and Western Gray Wolf DPS are reclassified as threatened while the Southwestern Gray Wolf DPS remains endangered (*see* map). The final reclassification rule summarizes information on the biology and ecology of gray wolves, taxonomy, historical range, previous Federal action, DPS designations, recovery plans, and the recovery progress of gray wolves in the lower 48 States.

This advance notice of proposed rulemaking (ANPR) announces our intent to propose rulemaking to remove the Eastern Gray Wolf DPS from protection under the Act based on evidence, as described in the final reclassification rule, indicating that the gray wolf in the Eastern Gray Wolf DPS is exceeding its recovery goals and objectives and on our preliminary analysis of threats to the DPS. The Eastern Gray Wolf DPS consists of gray wolves within the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area.



In addition, this ANPR announces our intention to respond to petitions for delisting the gray wolves in the Midwest through this anticipated proposed rulemaking. As stated in the final reclassification rule published today, Mr. Lawrence Krak, of Gilman, Wisconsin, and the Minnesota Conservation Federation have petitioned us to delist gray wolves in Minnesota, Wisconsin, and Michigan, and in the Western Great Lakes DPS.

Conservation and Recovery of the Gray Wolf in the Eastern DPS

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of ''recover'' and ''conserve'' under the Act. ''Conserve'' is defined in the Act itself (section 3(3)) while ''recovery'' is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as ''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.'' Recovery is defined as ''improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.'' Essentially, recover and conserve both mean to bring a species to the point at which it is no longer threatened or endangered and no longer needs the protections of the Act.

Critical to our analysis of whether a species is ready for delisting is the achievement of the species' recovery goals, the reduction of threats to the species that caused the species to become listed, and the reduction of any new threats that could cause the species to become endangered in the foreseeable future. To determine the appropriate goals for achieving recovery, we rely on a peer-reviewed Recovery Plan. As reported in the final reclassification rule, we believe the revised Eastern Timber Wolf Recovery Plan (Service 1992) to be adequate and sufficient to ensure long-term population viability (Peterson *in litt.* 1997). The population goal set within the Eastern Timber Wolf Recovery Plan was for a Minnesota wolf population of 1,250–1,400 animals to maintain the gray wolf's genetic diversity over the long-term and provide the resiliency to reduce the adverse impacts of unpredictable chance demographic and environmental events. The Minnesota wolf population currently is estimated to be double that numerical goal (Berg and Benson 1999; Mech 1998; Paul 2001).

In addition, the Eastern Timber Wolf Recovery Plan calls for establishing a second population of 100 gray wolves for 5 successive years in the Eastern United States. As documented in the final reclassification rule, such a second wolf population has developed in Wisconsin and the adjacent Upper Peninsula of Michigan and has exceeded its recovery goal since 1994 (Wisconsin Department of Natural Resources (WI DNR) 2002; Wydeven *et al.* 2002; Michigan Department of Natural Resources 2002). Wisconsin Department of Natural Resources preliminarily estimated that about 320 wolves in 70 to 80 packs were in the State in late winter 2001–2002 (WI DNR 2002, Wydeven *et al.* 2002).

As also described in the final reclassification rule, there is no convincing evidence in recent decades of another wild gray wolf population in the United States east of Michigan, so the area in the western Great Lakes States where the wolf currently exists represents the entire range of the species within the Eastern Gray Wolf DPS.

In making a delisting determination, the Service must assess the factors or threats that affect the species as required by section 4 of the Act and its implementing regulations (50 CFR part 424). For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following delisting and removal of the Act's protections.

Our evaluation of the future threats to the gray wolf in the Eastern DPS, especially those threats to wolves in the Midwest that would occur after removal or reduction of the protections of the Act, will be partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf is federally delisted, then State and tribal wolf management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation of gray wolves.

State and tribal gray wolf management plans, to the extent that they have been developed, serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued conservation after protection under the Act is removed. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public.

All three Midwestern States with wolf populations (Minnesota, Wisconsin, and Michigan) have completed wolf management plans. We believe that these plans provide sufficient information for us to analyze the future threats to the Eastern Gray Wolf DPS that will exist after Federal delisting. We will consult with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans prior to issuing a proposed delisting rule.

We recognize that large portions of the historic range, including potentially still-suitable habitat within the Eastern Gray Wolf DPS, are not currently occupied by gray wolves. We emphasize that our proposal to delist gray wolves in the Eastern DPS will be based on the current status of, and threats faced by, the existing wolf populations within this DPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.,* where the Court noted that ''[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat.'' Similarly, we believe that when a listed species has recovered to the point where it is no longer in danger of extinction, or likely to become endangered in the foreseeable future, throughout all or a significant portion of its current range, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied.

The wolf's progress toward recovery in the Eastern Gray Wolf DPS, together with our preliminary determination that management of threats to the wolf within the DPS will be adequate, enables us to propose delisting in the near future.

Post-Delisting Monitoring

Upon removal of a species from the List of Endangered and Threatened Wildlife, section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the post-delisting monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

In anticipation of delisting this species, we also announce our intent to work with State resource agencies, tribes, and other partners to design an effective post-delisting monitoring program for the Eastern Gray Wolf DPS to be implemented upon delisting. A proposed post-delisting monitoring plan will be provided in the proposed rule for delisting the Eastern Gray Wolf DPS.

Effects of This Advance Notice of Proposed Rulemaking

This ANPR announces our intent to propose rulemaking removing protections afforded to gray wolves in the Eastern Gray Wolf DPS under the Act. If we make a final decision to delist the gray wolf in the Eastern DPS, the prohibitions and conservation measures provided by the Act would no longer apply to this DPS, and the critical habitat designation in the Eastern Gray Wolf DPS would be removed. Therefore, taking, interstate commerce, import, and export of gray wolves in the Eastern Gray Wolf DPS would no longer be prohibited under the Act once the DPS is delisted. In addition, Federal agencies would no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of gray wolves in the Eastern Gray Wolf DPS or destroy or adversely modify designated critical habitat.

Until the Eastern Gray Wolf DPS is delisted, the take and use of gray wolves in the Eastern Gray Wolf DPS must comply with the Act and all other existing Federal, State, and local laws. Upon delisting, we anticipate that State and tribal gray wolf management plans, along with other appropriate Federal, State, and local laws and regulations, would guide gray wolf management in the Eastern DPS area.

This ANPR does not address gray wolves in the Western DPS, Southwestern DPS, or the current nonessential experimental population designations in those two DPSs.

No Request for Comment

The Service has not made a final decision as to any potential regulatory matter discussed herein and does not request any public comment on this ANPR. We will be following standard rulemaking procedure and anticipate publishing a proposed rule on the removal of the Eastern Gray Wolf DPS from the List of Endangered and Threatened Wildlife in the near future. A public comment period will open upon publication of the proposed rule in the **Federal Register**, and we anticipate conducting public hearings during the public comment period to discuss the proposed rulemaking with you.

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List of Subjects in 50 CFR Part 17

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

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–7020 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ04

Endangered and Threatened Wildlife and Plants; Removing the Western Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces our intention to conduct rulemaking under the Endangered Species Act of 1973, as amended (Act), to remove the Western Distinct Population Segment (DPS) of gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. Specifically, we intend to propose to delist the gray wolf in the Northern Rocky Mountains and western United States where it is presently listed. If this proposal is finalized, the gray wolf would be delisted in the Western Gray Wolf DPS, existing special regulations established under section 4(d) of the Act for the Western DPS would be abolished, the nonessential experimental designations for reintroduced gray wolves would be removed, and future management of this species would be conducted by the appropriate State and tribal wildlife agencies. As published concurrently in this **Federal Register**, the Service also intends to initiate proposed rulemaking to delist gray wolves in the Eastern Gray Wolf DPS. Neither proposed rulemaking would affect the protection currently afforded by the Act to gray wolves in the Southwestern DPS, the nonessential experimental population in the Southwest DPS, or the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: We are not seeking comments on this planned proposed rulemaking at this time. A public comment period, including the opportunity for public hearings and informational meetings, will follow the publication of the proposed rule to remove (or delist) the Western Gray Wolf DPS.

ADDRESSES: U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601; *WesternGrayWolf@fws.gov.*

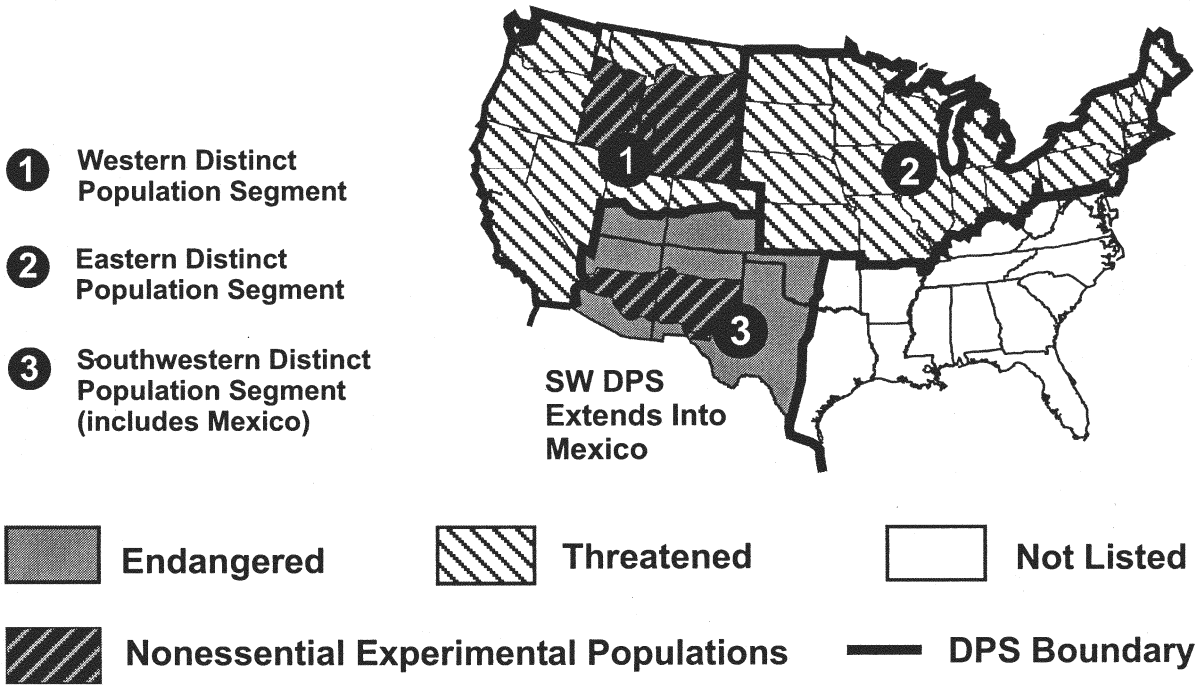
FOR FURTHER INFORMATION CONTACT: Ed Bangs, phone 406–449–5225 ext. 204. Additional information on gray wolf recovery in the Western DPS is available on our World Wide Web site at *http://westerngraywolf.fws.gov.* Direct all questions or requests for additional information to the Service (*see* **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Published concurrently in today's **Federal Register** is our final rule establishing three Distinct Population Segments (DPSs) of gray wolves within the conterminous 48 States in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) and reclassifying two of these DPSs based on the status of current wolf populations within these DPSs. The Eastern Gray Wolf DPS and Western Gray Wolf DPS are reclassified as threatened while the Southwestern Gray Wolf DPS remains endangered (*see* map). The final reclassification rule summarizes information on the biology and ecology of gray wolves, taxonomy, historical range, previous Federal action, DPS designations, recovery plans, and the recovery progress of gray wolves in the lower 48 States.

Status of the Gray Wolf in the Continental U.S.



This advance notice of proposed rulemaking (ANPR) announces our intent to propose rulemaking to remove the Western Gray Wolf DPS from protection under the Act based on evidence, as described in the final reclassification rule, indicating that the gray wolf in the Western Gray Wolf DPS is exceeding its wolf population recovery goals and on our preliminary analysis of threats to the DPS. The exterior boundary of the Western DPS encompasses the States of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70. Gray wolves in this geographic area are included in the Western DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Western DPS.

In addition, this ANPR also announces our intention to propose to remove the two nonessential experimental population designations (NEPs) for gray wolves in the northern Rocky Mountains. The final rule establishing those two NEPs in Idaho, Montana, and Wyoming indicated specifically that they were created to help establish viable wolf populations in central Idaho and the Greater Yellowstone Ecosystem (59 FR 60252 and 60266; November 22, 1994). Since these NEPs are part of the larger recovery program, these designations would be removed if the Western DPS is delisted.

In addition, this ANPR announces our intention to respond to a petition for delisting the gray wolves in the Rocky Mountains through this anticipated proposed rulemaking. As stated in the final reclassification rule published today, Mr. Karl Knuchel, on behalf of the Friends of Northern Yellowstone Elk Herd Inc., has petitioned us to delist gray wolves in the Rocky Mountains.

Conservation and Recovery of the Gray Wolf in the Western DPS

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of ''recover'' and ''conserve'' under the Act. ''Conserve'' is defined in the Act itself (section 3(3)) while ''recovery'' is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as ''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.'' Recovery is defined as ''improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.'' Essentially, recover and conserve both mean to bring a species to the point at which it is no longer threatened or endangered and no longer needs the protections of the Act.

Critical to our analysis of whether a species is ready for delisting is the achievement of the species' recovery goals, the reduction of threats to the species that caused the species to become listed, and the reduction of any new threats that could cause the species to become endangered in the foreseeable future. To determine the appropriate goals for achieving recovery, we rely on a peer-reviewed Recovery Plan: The revised Northern Rocky Mountain Wolf Recovery Plan (Service 1987). In addition, we conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 to ensure long-term population viability of gray wolves in the northwestern United States (Bangs 2002). Based on the opinions of experts who responded in that review, we have adopted the definition of wolf population viability and recovery developed in the 1994 Environmental Impact Statement for the reintroduction of gray wolves to Yellowstone National Park and central Idaho (Service 1994) in place of the 1987 Recovery Plan goal. That definition is ''Thirty breeding pairs of wolves (defined as an adult male and an

adult female that raise at least 2 pups until December 31 of the year of their birth), comprising some +300 individuals in a metapopulation with some genetic exchange between subpopulations, for three successive years.''

As documented in the final rule for reclassification of the gray wolf to threatened in the Western DPS (published concurrently), at least 300 wolves in a minimum of 30 packs since the end of 2000 have been well distributed across the 3 recovery areas, and at the end of 2001 there were 563 wolves in 34 packs in the Northern U.S. Rockies (Service *et al.* 2002). More than 200 wolves have existed in at least 20 packs since the end of 1997.

A minimum of 30 breeding pairs was first documented in 2000, and a minimum of 34 breeding pairs was documented in 2001. We fully expect to confirm in early 2003 that the wolf population in the northern Rocky Mountains will have again exceeded 30 breeding pairs in 2002, thus achieving the wolf population recovery goal as defined in the revised Northern Rocky Mountains Wolf Recovery Plan and the 1994 Environmental Impact Statement. Because the wolf population is continuing to expand since that time, we anticipate concluding that the gray wolves in the Western DPS have exceeded the numerical population goal required for delisting.

In making a delisting determination, the Service must assess the factors or threats that affect the species as required by section 4 of the Act and its implementing regulations (50 CFR part 424). For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following delisting and removal of the Act's protections. Our evaluation of the future threats to the gray wolf in the Western DPS, especially those threats to wolves in the NEPs in Idaho, Montana, and Wyoming that would occur after removal or reduction of the protections of the Act, will be partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf is federally delisted, then State and tribal wolf management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation of gray wolves.

State and tribal gray wolf management plans, to the extent that they have been developed, serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued conservation after protection under the Act is removed. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public.

The State of Idaho has already completed its gray wolf management plan. The Service is working closely with the States of Montana and Wyoming as they develop wolf management plans that will meet this requirement. We expect that these plans will be completed in the near future, and will enable us to propose delisting of the Western Gray Wolf DPS. We will also consult, if they request, with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans prior to issuing a proposed delisting rule.

We recognize that large portions of the historic range, including potentially still-suitable habitat within the Western Gray Wolf DPS, are not currently occupied by gray wolves. We emphasize that our proposal to delist gray wolves in the Western DPS will be based on the current status of, and threats faced by, the existing wolf populations within this DPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that ''[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat.'' Similarly, we believe that when a listed species has recovered to the point where it is no longer in danger of extinction, or likely to become endangered in the foreseeable future, throughout all or a significant portion of its current range, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied.

The wolf's progress toward recovery in the Western Gray Wolf DPS, together with our expectation that management of threats to the wolf within the DPS will be adequate, lead us to believe that we will be able to propose delisting of the Western DPS in the near future.

Post-Delisting Monitoring

Upon removal of a species from the List of Endangered and Threatened Wildlife, section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the post-delisting monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

In anticipation of delisting this species, we also announce our intent to work with State resource agencies, tribes, and other partners to design an effective post-delisting monitoring program for the Western Gray Wolf DPS to be implemented upon delisting. A proposed post-delisting monitoring plan will be provided in the proposed rule for delisting the Western Gray Wolf DPS.

Effects of This Advance Notice of Proposed Rulemaking

This ANPR announces our intent to propose rulemaking to remove the protections afforded to gray wolves in the Western Gray Wolf DPS under the Act. If we make a final decision to delist the gray wolf in the Western DPS, the prohibitions and conservation measures provided by the Act would no longer apply to this DPS, and the nonessential experimental population designations established to aid the recovery of gray wolves in the Western Gray Wolf DPS would be removed. Therefore, taking, interstate commerce, import, and export of gray wolves in the Western Gray Wolf DPS would no longer be prohibited under the Act once the DPS is delisted. In addition, Federal agencies would no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of gray wolves in the Western Gray Wolf DPS.

Until the Western Gray Wolf DPS is delisted, the take and use of gray wolves in the Western Gray Wolf DPS must comply with the Act and all other existing Federal, State, and local laws and regulations. Upon delisting, we anticipate that State and tribal gray wolf management plans, along with other appropriate Federal, State, and local laws and regulations, would guide gray wolf management in the Western Gray Wolf DPS.

This ANPR does not address gray wolves in the Eastern DPS, Southwestern DPS, or the current nonessential experimental population designation in the Southwest.

No Request for Comment

The Service has not made a final decision as to any potential regulatory matter discussed herein and does not request any public comment on this ANPR. We will be following standard rulemaking procedures and anticipate publishing a proposed rule on the removal of the Western Gray Wolf DPS from the List of Endangered and Threatened Wildlife in the near future. A public comment period will open upon publication of the proposed rule in the **Federal Register**, and we anticipate conducting public hearings during the public comment period to discuss the proposed rulemaking with you.

References Cited

Bangs, E.E. 2002. Wolf population viability peer review—draft summary. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. Unpublished report. 9 pp.

U.S. Fish and Wildlife Service. 1987. Northern Rocky Mountain wolf recovery plan. Denver, CO 119 pp.

U.S. Fish and Wildlife Service. 1994. The reintroduction of gray wolves to Yellowstone National Park and central Idaho. Final Environmental Impact Statement. U.S. Fish and Wildlife Service, Helena, Montana.

U.S. Fish and Wildlife Service, Nez Perce Tribe, National Park Service, and USDA Wildlife Services. 2002. Rocky Mountain Wolf Recovery 2001 Annual Report. T. Meier, ed. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. 43 pp.

List of Subjects in 50 CFR Part 17

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

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–7019 Filed 3–31–03; 8:45 am]

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Federal Register

Tuesday,
April 1, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 129
Collision Avoidance Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 129

[Docket No.: FAA–2001–10910; Amendment Nos. 121–286, 125–41, and 129–37]

RIN 2120—AG90

Collision Avoidance Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is revising the applicability of certain collision avoidance system requirements for airplanes. The current rules are based on passenger seating configuration and therefore exclude all-cargo airplanes. This final rule will use airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more than 33,000 pounds (lbs.) maximum certificated takeoff weight (MCTOW). This final rule is intended to reduce the risk of a mid-air collision involving a cargo airplane, which will increase safety for cargo crewmembers, the public on the ground, and occupants of airplanes that already have collision avoidance systems.

DATES: Effective May 1, 2003, except for the revisions of §§ 121.356, 125.224, and 129.18 which are effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Carrier Operations Branch, Flight Standards Service, AFS–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search);*

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact SBREFA. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov.*

Background

Statement of the Problem

Current FAA rules do not require collision avoidance systems on all-cargo airplanes. When the FAA issued the traffic alert and collision avoidance system (TCAS) rules for passenger airplanes in 1987, the overnight cargo industry expansion was in its infancy, it operated few airplanes and those were primarily at night. Congress, in its legislation directing installation of TCAS in passenger airplanes, determined that those cargo airplanes did not represent a significant risk to passenger-carrying airplanes, which operated primarily during the day.

In promulgating the rules the FAA recognized that those few cargo airplanes would benefit some from the TCAS requirement for passenger airplanes because transponder-equipped cargo airplanes are displayed to pilots of TCAS-equipped passenger airplanes. Cargo airplanes also benefit because of the large number of passenger airplanes that are equipped with TCAS. In addition, the FAA determined that the cost/benefit analysis and risk level at that time did not support requiring cargo operators to equip their airplanes with TCAS.

Since those early days of TCAS, cargo operations have grown significantly and we now believe the increase in traffic presents an increased risk of a mid-air collision involving a cargo airplane. We are issuing this amendment to use airplane weight and performance characteristics to encompass cargo as well as passenger airplanes and to standardize and clarify the collision avoidance rules in parts 121, 125, and 129. The FAA believes this would reduce the risk of midair collisions, increasing public safety in the air and on the ground.

History

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act (AIR–21) was enacted (Pub. L. 106–181) and later codified at 49 U.S.C. 44716(g). That section directs the FAA to require all cargo airplanes of more than 15,000 kilograms (kg.) MCTOW to be equipped with collision avoidance equipment by December 31, 2002. It also provides for an extension of up to 2 years for safety or public interest reasons.

Section 44716(g) defines collision avoidance equipment as ''equipment that provides protection from mid-air collisions using technology that provides cockpit-based detection and conflict resolution guidance, including display of traffic; and a margin of safety of at least the same level as provided by the collision avoidance system known as TCAS II.''

Before Congress passed AIR–21, the FAA had been working on a proposal to require collision avoidance systems on cargo airplanes. The justification for that effort was:

- The large increases in all-cargo traffic volume (night and day operations),
- Two near mid-air collisions (NMACs) involving cargo airplanes,
- A petition for rulemaking to put TCAS on cargo airplanes from the Independent Pilots' Association (representing United Parcel Service pilots),
- The International Civil Aviation Organization (ICAO)'s recommendation to equip all airplanes with an airborne collision avoidance system (ACAS), which is equivalent to TCAS II, version 7.0, and
- The National Transportation Safety Board (NTSB)'s recommendation urging the FAA to require TCAS II and a Mode S transponder on certain airplanes.

The Proposed Rule

On November 1, 2001, the FAA published Notice of Proposed Rulemaking (NPRM) No. 01–12 (66 FR 55506) ''Collision Avoidance Systems.'' That document proposed collision avoidance requirements for part 121, 125, and 129 operators of certain airplanes. Specifically, turbine-powered

airplanes of more than 33,000 lbs. (15,000 kg.) MCTOW operated under part 121, 125, or 129 would be required to be equipped with TCAS II, or equivalent. Turbine-powered airplanes of 33,000 lbs. or less MCTOW operated under part 121, 125, or 129 would be required to be equipped with at least TCAS I, or equivalent. All piston-powered airplanes, regardless of weight, conducting operations under part 121 or 125 would be required to be equipped with at least TCAS I, or equivalent.

Discussion of Comments

The comment period for notice No. 01–12 ended on December 31, 2001. In response to that notice we received 465 comments. The overwhelming majority of commenters were strongly in support of the proposal. Cargo pilots from United Parcel Service (UPS) comprised the largest group of commenters, accounting for 238 comments in favor of the proposal. Other air cargo pilots from DHL, Fed Ex, Kittyhawk Aircargo, and Polar Air Cargo added approximately 100 more comments in favor of the proposal. Passenger carrier pilots, military pilots, and general aviation pilots also commented in favor. Other commenters represent pilot labor unions, pilot associations, air carriers, air carrier associations, an avionics manufacturer, a civil aviation authority, the NTSB, and many nonaffiliated individuals. The FAA reviewed and considered all comments during deliberations of this final rule.

We received approximately 280 comments, half of which were nearly identical in content, expressing very general support of the proposal. Most of these comments did not address specific issues except indicating that the rule would enhance safety for cargo pilots, for persons on the ground, and in the national airspace system. One person in this group of commenters states that there should be no distinction between cargo and passenger aircraft regarding the collision avoidance systems installed. Another commenter feels there is no equipment that exceeds the value of TCAS. One commenter adds that requiring consistent TCAS rules across all fleets just makes good sense. Several commenters echoed that sentiment citing the need for ''one level of safety'' for passenger and cargo airplanes, regardless of how many occupants are carried. Many of these commenters urge the FAA to issue the final rule as soon as possible and indicate that this rule is long overdue.

Nearly all commenters were supportive of the general concepts of the proposal; however, some included specific concerns related to: (1) The compliance period, (2) the requirement for TCAS II, version 7.0, (3) alternative systems to TCAS, (4) transponder requirements, (5) aircraft performance capability to respond to resolution alerts (RAs), and (6) the cost of the rule. The strongest criticism of the proposed rule came from four supporters of automatic dependent surveillance-broadcast (ADS-B) and from those who believe the rule is not necessary for some piston-powered airplanes. Some commenters urge us to seriously consider the capabilities of ADS-B as an alternative to TCAS. One commenter states the proposal would not improve safety in the national airspace system because the rule's restrictive nature could prevent the development of new and improved systems.

Below is the summary of the more specific comments. We introduce each topic with what the NPRM proposed, followed by a discussion of the comments and our response to those comments. Our response includes the FAA's decision to leave the rule as proposed or to change it.

Compliance Date

Proposed Rule

In notice No. 01–12, the FAA proposed that all airplanes without TCAS and weighing over 33,000 lbs. MCTOW install a collision avoidance system by October 31, 2003. Section 44716(g) of 49 U.S.C. directs the FAA to require collision avoidance equipment that has a margin of safety of at least the same level as provided by TCAS II by December 31, 2002, and allows a 2-year extension for public interest or safety. In the proposal, we felt that a compliance date of October 31, 2003, would provide adequate time for air carriers to schedule the installation of collision avoidance during a major C or D check.

Comments

Several commenters, all representing cargo carriers, disapproved of the compliance period and recommended that we extend it. We received an equivalent number of comments requesting that we not extend it. For example, the FedEx Pilots Association (FPA) recommended adopting Congress's earlier compliance date of December 31, 2002, and the NTSB, and various pilots requested that we not extend the compliance date beyond the proposed October 31, 2003. The NTSB strongly encourages the FAA to adhere to the equipment requirements and schedule contained in the proposed regulatory amendments and to expedite the implementation of these important rules.

Nearly 140 commenters (submitting similar form letters), representing the Coalition of Airline Pilots and primarily UPS pilots, believe the earlier Congressionally mandated date—December 31, 2002—is reasonable. They state that the December 2002 date coincides with ICAO recommendations, the hardware is readily available, most aircraft have approved installation procedures for TCAS, and many are prewired for TCAS. They suggest an extension to October 1, 2003, only in extenuating circumstances.

However, we heard from many air carriers indicating that the compliance schedule we proposed would be too difficult to comply with. Among the reasons cited were the schedules of individual carriers' C and D maintenance checks and various proposed Mode S modifications. FedEx Express, Supplemental Air Operations states that it would not complete a C or D check on its entire fleet before October 31, 2003, even without the collision avoidance rule. It states that the short compliance period does not allow time for operators to bid, select, engineer, schedule, and perform the work required for the installation of collision avoidance. It suggests a compliance date of March 29, 2005, to coincide with the terrain awareness warning system/enhanced ground proximity warning system (TAWS/EGPWS) compliance date and minimize disruptions to operations.

The Air Transport Association (ATA) recommends that we establish a compliance date when we issue the final rule to ensure the date coordinates with other regulatory initiatives, namely domestic and international transponder modifications. Its recommendation, echoed by Airborne Express and Northern Air Cargo, Inc., is to allow 24 months after the publication date of the rule for installation of collision avoidance. According to Airborne Express, the percentage of aircraft without collision avoidance during the last year of the compliance period would be small, which would have an insignificant effect on safety. Airborne Express also supports its request to extend the compliance date because it will have to install Mode S transponders on many of its airplanes.

FedEx Express, Air Operations Division (FedEx) also commented on the compliance date, stating that the short period would impose special down time with considerable operational impact to install collision avoidance on an estimated 41 airplanes that do not already have TCAS. Also, FedEx notes that security-related requirements for transponder system modifications will

affect the TCAS-related Mode S transponder. It believes that incorporating those requirements into the collision avoidance transponder requirements would avoid future retrofitting. FedEx recommends a compliance date of December 31, 2004, for those reasons.

Several other air carriers suggest a 24-month compliance period to install collision avoidance. The Cargo Airline Association (CAA) and UPS recommend December 31, 2004, but UPS earmarks the extension to allow the certification and orderly installation of ADS-B. The CAA also suggests that the FAA consider a phase-in compliance period, with a certain percentage of airplanes equipped with collision avoidance by October 31, 2003, and 100 percent compliance by December 31, 2004. One individual recommends a compliance date of December 31, 2004, but gives no reason for the extension. The Aerospace Industries Association (AIA) recommends 3 years to coincide with reduced vertical separation minimum (RVSM) operations, and USA Jet Airlines, Inc., recommends a 5-year compliance period to coincide with TAWS and RVSM. Evergreen International Airlines, Inc., recommends that the compliance date coincide with any hijack-mode modifications to transponders.

FAA's Response

When Congress mandated the FAA to require collision avoidance systems for cargo airplanes by December 31, 2002, it also allowed an extension of the compliance date to December 31, 2004. That extension is marked for ''a safe and orderly transition to the operation of a fleet of cargo aircraft equipped with collision avoidance equipment; or other safety or public interest.'' Based on public comments and FAA's rulemaking experience, we have determined that an extension is needed for orderly installation and training associated with this new equipment. This extension meets the intent of Congress. Any suggested compliance date beyond December 31, 2004, is not allowed in the Congressional mandate.

This final rule will require affected operators to install a collision avoidance system on affected airplanes by December 31, 2004. The compliance date is 1 year and 2 months later than the proposed date of October 31, 2003.

As CAA suggested, we did consider a phase-in approach for collision avoidance system compliance, which we have used with other rulemaking projects. We used a phase-in compliance period, for example, the original TCAS rule, and the digital flight data recorder rule. We found that such a compliance mechanism is labor intensive and difficult to implement. The FAA believes that a phase-in approach is impractical in this case because this rule covers passenger-carrying and cargo airplanes. It is better to allow operators to schedule their own installations.

Grandfathering/Early Compliance

Proposed Rule

In the NPRM, we proposed to allow those operators that had installed TCAS II version 6.04A Enhanced before December 3, 2001 (which has been required for passenger-carrying airplanes for years), to continue operating with that system until it can no longer meet the TCAS II version 6.04A Enhanced technical standard order (TSO C–119a) (''grandfathering''). However, installation of TCAS II for the first time after December 3, 2001 (30 days after the publication date of the NPRM), would have to be TCAS II version 7.0 (''early compliance'').

Comments

Some commenters disagree with using the NPRM publication date as a compliance date because it constitutes retroactive compliance. FedEx believes that it contradicts the spirit of due process and effectively reduces the rate of TCAS II installations. It states that some operators planning on installing TCAS II version 6.04A Enhanced on their aircraft may now have to defer installation based on the availability of version 7.0—working against the goal of early equipage. FedEx adds that this requirement would not affect them because they have been installing version 7.0 since December 1, 2001. The CAA also believes that requiring ''early compliance'' for version 7.0 goes against the interests of early equipage and enhanced safety. It adds that this requirement would cause TCAS II installations to stop or would cause version 6.04A Enhanced to become obsolete at a later date. It states that this compliance requirement would result in fewer TCAS-equipped airplanes in the short run and would disrupt carefully constructed industry compliance schedules.

Eurocontrol takes another point of view in its concern that TCAS II version 6.04A Enhanced units currently in service will not be upgraded on the compliance date or any defined schedule. Its position is that version 7.0 offers important safety and air traffic control (ATC) operational compatibility advantages. It also believes that all airplanes subject to the Congressional mandate should be required to install version 7.0 and that we should encourage passenger-carrying operators with airplanes already fitted with version 6.04A Enhanced to upgrade to version 7.0.

The Airline Pilots Association (ALPA) strongly supports the proposal to require version 7.0 for first-time installations and to include the early compliance date, crediting the operational improvements gained between version 6.04A Enhanced and 7.0.

AIA interprets the proposal to mean that all airplanes delivered after the publication date of the NPRM must be operated with TCAS II version 7.0. It indicates that Boeing is still delivering TCAS II version 6.04A Enhanced units to domestic carriers that have opted not to upgrade to TCAS II version 7.0. AIA recommends we delete early compliance and encourage operators to convert to version 7.0 as soon as practicable.

FAA's Response

We drafted the proposal so that no operator—passenger or cargo—would be required to retrofit its TCAS II unit to version 7.0 if version 6.04A Enhanced was installed before December 3, 2001. We included the ''grandfathering'' provision in the proposal as a compromise to requiring a retrofit to version 7.0 for all airplanes requiring TCAS II and have maintained it in the final rule.

The FAA included the ''early compliance'' provision to prevent new installations of older TCAS equipment, *i.e.*, allow new installations of version 6.04A Enhanced, instead of version 7.0 after the NPRM was published. Although the FAA concerns had validity, commenters have convinced us that the proposed date for early compliance is inappropriate. Consequently, we have amended that provision in the final rule. We believe that realistically, most airplanes will be equipped with version 7.0 before the final compliance date of this rule, even though grandfathering continues to be allowed. This is because many flights are in countries that require TCAS II version 7.0. Operators may also elect to conduct RVSM operations, which requires version 7.0 if the airplane has TCAS II installed.

Some commenters were concerned that the FAA was in effect writing a final rule in the NPRM by using a retroactive installation date for TCAS II version 7.0. We feel that because a newer, improved version is available, all first-time installations should be version 7.0. TCAS II version 7.0 includes a

number of upgrades that improve the quality of TCAS II. Version 7.0 has the advantage of harmonizing with ICAO, improving ATC efficiency, accuracy, and RVSM capability. We believe that it will not be a burden for cargo carriers to buy version 7.0, rather than version 6.04 since they will have to buy one or the other. We researched availability of version 7.0 and are convinced that supplies are sufficient to support this rule.

Based on the comments, the FAA has decided to allow installation of version 6.04A Enhanced until 30 days after the publication of the final rule instead of the proposed 30 days after publication of the NPRM. This provision applies to operators that buy, sell, or lease airplanes with TCAS II version 6.04A Enhanced.

In response to AIA's comment regarding a manufacturer that continues to deliver airplanes with version 6.04A, the rule language only refers to the date the equipment is installed, not when it is delivered. Operators would be responsible for ensuring that its collision avoidance systems were installed before the required compliance date.

Alternative Collision Avoidance Systems and Other Equipment Issues

Proposed Rule

To accommodate any future technology that may be equivalent to TCAS I or II, we provided for alternatives in lieu of TCAS I or II in the proposal. An alternative system must be approved by the FAA.

Comments on ADS–B

One of the most popular issues that commenters addressed was comparing TCAS to ADS–B. Over 135 commenters (most via form letters from cargo pilots) believe that ADS–B eventually will be a ''commendable'' system, but until it is fully proven, TCAS should be the required collision avoidance system. Approximately 12 commenters indicate that ADS–B is not equivalent to TCAS. Three of those commenters, including Eurocontrol, indicate that this is because ADS–B does not provide conflict resolution capability. ALPA echoes those sentiments stating that ''* * * other technologies are under development but lack the potential to operate independently in any part of the world. Any potential equivalent system must function independently from ground-based systems, demonstrate TCAS II capabilities, be interoperable with TCAS and assure the redundancy to perform as the pilots' last resort safety assurance system.''

Eurocontrol supports allowing a truly equivalent system that is interoperable with TCAS. It believes ICAO is the appropriate forum to agree on equivalence at the international level; however, it is concerned that there does not currently exist an agreement among aviation authorities as to what constitutes equivalence.

Eurocontrol believes the FAA is overemphasizing the potential of ADS–B and finds FAA's description misleading and confusing. According to Eurocontrol, ADS–B, like Secondary Surveillance Radar (SSR), supports the surveillance infrastructure, which it indicates is more importantly used for separation rather than collision avoidance. Eurocontrol maintains that it is critical to keep distinct and separate the concepts of separation and collision avoidance. Eurocontrol indicates that the ''primary use of ADS–B data should be for the provision of separation, and the system employing the data should be constructed to a level of performance and integrity, which would make collision avoidance virtually unnecessary.''

Finally, Eurocontrol states that TCAS II provides collision avoidance protection based on an independent measurement of range and ADS–B does not.

ALPA supports the FAA's decision that any potential equivalent system must: (1) Function independently from ground-based systems, (2) demonstrate TCAS II capabilities, (3) be interoperable with TCAS, and (4) assure the redundancy to perform as the pilots' last resort safety assurance system. It adds that the FAA should proceed with a known, proven product.

On the other end of the spectrum are four supporters of ADS–B's potential. They believe that ADS–B is misrepresented in the NPRM and made suggestions for improvement. Many of the criticisms of the proposal stem from perceptions that the rule imposes onerous restrictions on non-TCAS systems, well beyond what Congress mandated.

The CAA states that AIR–21 requires an equivalent level of safety to TCAS II but does not necessarily require interoperability or coordinated maneuvers between any new system and TCAS. It concludes that the legislation was not technology-specific, which opens the door for alternative systems that do not have to be interoperable with TCAS. According to the CAA, the FAA's apparent prejudice against ADS–B violates the spirit of AIR–21.

The CAA asserts that the FAA provides no relevant analysis on the safety implications of the need for interoperability. It adds that RTCA SC–186, Working Group 1 has studied the issue and has provided alternatives to the ''coordinated maneuvers'' requirement.

The CAA argues that the FAA does not seriously consider the possibility of an alternative system based on ADS–B technology. It contends that the analysis contains inaccuracies and omissions that could preclude the certification of a system that is more accurate and could provide a significantly safer air transportation system than TCAS. It states that the FAA ignores the potential use of traffic information service-broadcast (TIS–B), which it indicates would allow ADS–B to ''see'' TCAS-equipped aircraft. The CAA recommends we delete and reexamine our analysis of the potential use of ADS–B to meet Congress's intent of encouraging, not discouraging, innovative solutions to the collision avoidance question.

United Parcel Service Airlines (UPS) supports the deployment of ADS–B as an alternative collision avoidance system and believes that it could address many shortcomings of TCAS. According to UPS, TCAS provides no information regarding target identification, speed, heading, type, or intent, whereas ADS–B does. In addition, it maintains that:

- ADS–B provides accurate target information below 1,000 feet above ground level (AGL) and on the ground,
- ADS–B derives altitude from GPS, thereby making vertical conflict resolution more reliable and less prone to error than TCAS,
- ADS–B displays range greater than 120 miles, whereas TCAS is typically 12 miles, and
- The bearing accuracy of ADS–B can support horizontal conflict resolution, which TCAS cannot.

UPS criticizes the collision avoidance proposal because it believes that it imposes restrictions on non-TCAS systems that prevent an applicant from pursuing an alternative technology. It lists examples of purported errors from the proposed rule that it believes support its claim that the FAA implicitly is requiring only TCAS as a collision avoidance system.

UPS also criticizes the FAA for not outlining standards to measure potential equivalent collision avoidance systems. It adds that the FAA must perform the necessary analysis to produce a uniform measurement of safety. This will allow the comparison of benefits provided by TCAS II and other collision avoidance technologies. UPS argues that in PL 106–181, Congress intended for the FAA

to create the yardstick to evaluate the margin of safety of TCAS alternatives. UPS further contends that, because PL 100–223 calls for the FAA to implement horizontal guidance and PL 106–181 requires conflict resolution guidance, Congress likely required the deployment of an ADS–B-based collision avoidance system. UPS states that TCAS has neither of these capabilities.

Finally, UPS makes suggestions to amend the proposed regulatory text. It recommends that we eliminate the requirement that an equivalent system be capable of coordinating with TCAS units. It suggests instead that an equivalent system reduce the risk of collision to a level equivalent to the reduction provided by a TCAS II that meets TSO C–119a. It also recommends that we add the requirement that any collision avoidance system used must comply with PL 100–223 and provide horizontal resolution.

One commenter believes the rule will not improve safety in the national airspace system (NAS), because its restrictive nature could prevent new and improved systems from being developed. More specifically, he contends that the rule will stifle the development of ADS–B's pertinent application, Airborne Conflict Management (ACM), which he says will improve safety and increase capacity in the NAS.

The commenter adds that TCAS does not resolve all potential collision encounters, but that ADS–B contains more information content, resulting in more effective collision avoidance maneuvers in both the horizontal and vertical planes. He believes that ADS–B can be used to develop a more effective collision avoidance system and traffic management system than TCAS. The commenter argues that TCAS is not totally independent from the ground-based secondary surveillance radar system because it shares the transponder and altimeter in the aircraft. According to the commenter, the altimeter is a common point of failure that can result in false TCAS resolution advisories.

The commenter disagrees with our proposal to require maneuver coordination for any equivalent system used in lieu of TCAS. He states that the ACM sub-group of RTCA–186 has been working on a system that could overcome some of the limitations of TCAS and has determined that coordination is not necessary. He concludes his comment with recommendations to change the regulatory text. He suggests that we eliminate the provisions that an equivalent system be capable of coordinating with TCAS units. In place of it, the commenter suggests adding that equivalent systems reduce the risk of collision to a level equivalent to the reduction provided by TCAS.

Another commenter also supports the potential of ADS–B as an equivalent system to TCAS. He believes that TCAS was the correct system for collision avoidance before the development of global positioning systems (GPS). However, according to the commenter, the FAA made two mistakes implementing TCAS requirements: (1) Not recognizing the contribution GPS would eventually make to traffic conflict and collision prevention, and (2) using Air Traffic Control Radar Beacon System (ATCRBS) Mode S as the vehicle for TCAS. He believes that these two mistakes caused collision avoidance to cost 10–100 times what it should and that it still experiences false alarms. According to the commenter, pilots ignore half of all TCAS resolution alerts (RAs) because they feel that although TCAS has prevented some collisions, it will eventually cause one.

The commenter argues that the Capstone project in Alaska shows that ADS–B is a mature system, capable of providing collision avoidance functions. (The Capstone project is an FAA-funded evaluation, in which ADS–B is installed on certain airplanes under controlled conditions. The Capstone project is further explained in the FAA's response to this comment below.) He states that the accuracy and integrity of ADS–B nearly eliminates the need for collision avoidance. He adds that the susceptibility of ADS–B to the loss of GPS will be eliminated when the FAA and other agencies adopt the existing Loran-C as the back-up navigation source.

The commenter makes suggestions to amend the proposed regulatory text. He recommends, identical to UPS, that we eliminate the requirement that an equivalent system be capable of coordinating with TCAS units. He suggests instead that an equivalent system reduce the risk of collision to a level equivalent to the reduction provided by a TCAS II that meets TSO C–119a. He also adds that the proposed rule document has too many errors to list and that RTCA would address those issues.

FAA's Response to ADS–B Comments

The FAA supports the development of ADS–B. The intent of the rule is to provide the opportunity for future equipment to be certified to either meet or exceed the collision avoidance function of the current TCAS system. The burden to show equivalence is on the applicant. The developers of ADS–B have not requested that FAA approve ADS–B as equivalent to TCAS. Some commenters referred to systems being studied by RTCA; however, the FAA did not receive comments from RTCA.

While the FAA has set out the elements it considers to be part of a TCAS equivalent such as interoperability, it is not appropriate in this rule to set specific technical standards for individual equipment. It is not the intent of the FAA to approve or disapprove equipment as equivalent to TCAS through this regulation. If, in the future, a collision avoidance system is presented to the FAA for certification and approval, we will examine the applicant's data to determine if the system is equivalent.

The FAA agrees with Eurocontrol that it would be beneficial for there to be agreement between Authorities as to what would constitute equivalence, and that ICAO would be the appropriate forum. An international agreement on equivalence could open the door for new technologies. The FAA, however, must have its own standard for findings of equivalency. It is our intent to then make every effort to harmonize these standards.

It is our position that an equivalent system to TCAS II must be interoperable with TCAS II, provide protection against the same population addressed by TCAS II, and coordinate with currently approved devices meeting the requirements of §§ 121.356, 125.224, and 129.18. This is what we interpret Congress to mean when it defined in 49 U.S.C. 44716(g)(3) collision avoidance equipment as ''equipment that provides protection from mid-air collisions using technology that provides'a margin of safety of at least that same level as provided by the collision avoidance system known as TCAS II.'' While Congress did not specifically use the term ''interoperability,'' the FAA has determined that without interoperability, another alternative collision avoidance system would not be equivalent to TCAS.

Although commenters suggest that an alternative system to TCAS need only provide an equivalent reduction in collision risk, we are responding to a Congressional direction that requires more than just a reduction in collision risk. Congress mandated ''collision avoidance equipment that provides protection from mid-air collisions using technology that provides cockpit-based collision detection and conflict resolution guidance, including display of traffic; * * *'' Congress has defined collision avoidance equipment as technology equivalent to TCAS. At this

time there is no system equivalent to TCAS.

This final rule provides the opportunity for future developments without requiring more rulemaking. It is not intended to discourage private-sector, on-going efforts. However, at this time, neither the FAA nor other regulatory authorities are sponsoring programs to develop alternatives to TCAS II/ACAS II (the international equivalent to TCAS II version 7.0) to meet U.S. or international requirements. Allowing for an equivalent system is meant to be helpful to affected parties.

The FAA is responding to Congress and cannot delay this rulemaking for future development. We have extended the compliance date as discussed; however, we cannot extend beyond the date imposed by Congress. It is not the FAA's intent to delay or cancel incentives for new development of systems. The FAA has established a commitment to the development of the ADS–B technologies and works in the international forum with ICAO, Eurocontrol, and others to further this promising technology.

In regard to the comment about Capstone, the FAA is very familiar with ADS–B use in Alaska under the Capstone program. FAA funds were used to equip certain airplanes in Bethel, Alaska, with ADS–B. So far there are approximately 150 participating airplanes. Other than the Cessna 208, which is turbine, all of the airplanes are piston-powered. Most are operated in accordance with part 135, which this rule does not address. Capstone is a demonstration under very controlled conditions where every airplane involved has the necessary equipment. Capstone has demonstrated the utility of an avionics suite containing GPS receivers, moving map display, terrain awareness feature and ADS–B. In Alaska, ADS–B has been approved for provision of radar like services by Air Traffic Control. The Capstone program is entering a second phase which will utilize the Wide Area Augmentation System (WAAS) to provide more precise and robust navigation capabilities and allow for new routes previously unavailable to operators and will continue to develop ADS–B capabilities.

In the lower 48 states, the Safe Flight 21 program office has entered into a joint government-industry effort to develop ADS–B applications that will provide an impetus for widespread equipage by commercial and general aviation operators in the United States. There are numerous applications of ADS–B that, when implemented, could improve safety through greatly enhanced situational awareness. ADS–B installations have been approved in transport category aircraft utilizing the 1090 MHz (transponder) data link. Installations in the Capstone program have utilized the Universal Access Transceiver (UAT) as the data link for ADS–B transmissions. We currently do not have sufficient evidence showing that ADS–B would be a substitute for TCAS.

One commenter's reference to non-compliance to RAs ignores data analysis that shows such non-compliance occurs when pilots acquire the other aircraft visually and determine that a threat does not exist. In other words, there are times when non-compliance with an RA may be appropriate. When the pilot is in instrument meteorological conditions, the only action available to the pilot is to respond to the alert. This same commenter stated that TCAS could cause collisions. However, his statements are unsupported and contrary to the numerous airline pilots' comments received and FAA's experience. The commenter did not provide any data to support his claim that nuisance or unnecessary alerts are costly.

Comments on Other Equipment

In addition to the system alternative issues, three commenters addressed Mode S transponder issues. One commenter indicates that a Mode S is sufficient for collision avoidance without TCAS because it can continuously provide a ''squitter'' of barometric and GPS position with heading and speed, giving all aircraft and ground listeners the opportunity to locate and avoid the transmitter. He says British Airways has implemented this technology on an experimental basis. According to the commenter, adding a Mode S squitter would increase receiver-equipped aircraft four-fold within 6 years. He believes military and public aircraft without transponders could listen to position reports using the low-cost, uncertified receivers. He requests that all future mandates for collision avoidance systems include Mode S squittering of altitude, latitude, and longitude.

For clarification, the term ''squitter'' refers to a system designed to transmit and receive signals from a transponder, without active interrogation of the transponder. It also refers to a signal transmitted by the system. TCAS II requires a Mode S transponder, which is interrogated by other TCAS II equipment and replies to that equipment. A squitter system would be able to transmit and receive any information from the transponders, but it would not actively interrogate other aircraft as a TCAS II would.

Ryan International Corporation (Ryan) suggests we include traffic advisory system (TAS) Class A as a less expensive equivalent alternative to TCAS I. It makes this suggestion on the basis of the high cost to install a Mode S transponder. Another commenter agrees with Ryan in that we should include a less expensive form of TAS in lieu of TCAS I. That commenter believes that while TCAS provides a very useful tool to improve the safety of our airways, it is also very costly.

Ryan also inquires as to whether Mode S is required for TCAS I installations. It states that that does not seem to be the case in the preamble of the proposal, but in the proposed regulatory text, it appears that Mode S is required for TCAS I, or equivalent.

FAA's Response Regarding Other Equipment

In response to Ryan's inquiry regarding whether Mode S is required for TCAS I, Mode S is not required for those airplanes that need only a TCAS I. It is not our intent to mandate Mode S in this rule for TCAS I installations because it is not an integral part of the TCAS I installation. The commenter's confusion may have resulted from the appearance of the table in the **Federal Register**.

It should be noted that there are Mode S requirements described in existing §§ 121.345(c)(2), 125.224(a), and 129.18(a)(2). In addition, an appropriate class of Mode S is required to be installed as a part of a TCAS II installation, which is consistent with the existing rule and the proposed rule. In the final rule, the Mode S reference will remain in §§ 121.356, 125.224, and 129.18 because it is a required element in a TCAS II system.

We did make one change to the Mode S reference from the proposed rule. We inserted, for clarification, that the Modes S must be an appropriate class. This is similar language to the existing TCAS II rule. There are multiple classes of Mode S transponders within TSO C–112 and currently TCAS II functions only with at least a class 2 Mode S transponder. At the time of the issuance of this final rule, there is still no system found to be equivalent to TCAS.

Exceptions/Applicability

Proposed Rule

The FAA proposed that part 121, 125, and 129 turbine-powered airplanes that weigh more than 33,000 lbs. MCTOW would require TCAS II, or equivalent. We proposed that part 121 and 125

turbine-powered airplanes weighing 33,000 lbs. MCTOW or less, and all 121 and 125 piston-powered airplanes would require at least a TCAS I, or equivalent. We proposed that part 129 turbine-powered airplanes weighing 33,000 lbs. MCTOW or less would require TCAS I, or equivalent.

Comments

Two commenters request that we except some airplanes from the collision avoidance rule. According to one of these commenters, older, piston-powered, large aircraft conducting all-cargo operations do not have the performance necessary for rapid climbs. He states that passenger aircraft already equipped with TCAS can more safely maneuver to avoid an aircraft in steady-state flight. He states that this rule is not in the public interest and will put small air cargo operators with these airplanes out of business.

The second commenter, Northern Air Cargo, agrees that its B727–100 aircraft should be TCAS II-equipped, but it requests that we except ADS–B-equipped DC–6 aircraft operating under the Capstone project within the State of Alaska. The commenter states that its DC–6 aircraft cruise at much lower altitudes and airspeeds and do not fly among other TCAS-equipped aircraft during most phases of flight. It adds that most of its DC–6 aircraft are Capstone-equipped and operate solely within the State of Alaska and, occasionally, into remote areas of Canada and the lower 48 states.

ALPA, on the other hand, suggests that the proposal could be more restrictive. It asserts that some turbine-powered airplanes weighing less than 33,000 lbs. MCTOW, and some piston-powered airplanes, could respond to TCAS II RAs. It does not agree that certain airplanes operated under part 129 are too small to operate practically with collision avoidance. It states that the same type of piston-powered airplanes could be operating in the same airspace under part 121, 125, or 129, but the piston-powered, part 129 airplane would not be required to have TCAS I. It believes that we should use only a performance threshold to capture all airplanes in parts 121, 125, and 129 uniformly.

Eurocontrol provides a preliminary study demonstrating that light airplanes can respond to RAs. Eurocontrol recommends that we require TCAS II version 7.0 for all airplanes, including those that we proposed to use TCAS I, or equivalent.

FAA's Response

The FAA has decided not to include cargo airplanes weighing 33,000 lbs. or less in this final rule. This is a change from the NPRM, in which we proposed collision avoidance requirements for all airplanes weighing 33,000 lbs. MCTOW or less. We made this decision to reduce a burden on the operators of these airplanes. However, the FAA did maintain the proposed TCAS I (or equivalent) requirement for piston-powered airplanes weighing more than 33,000 lbs.

We have already reduced the burden for the older piston-powered airplanes weighing more than 33,000 lbs. MCTOW. We proposed and will require only TCAS I, or equivalent, for those airplanes. Part 129 already excepts piston-powered airplanes from collision avoidance requirements. The FAA proposed to continue that exception and we have decided to adopt the rule as proposed.

The FAA received comments from ALPA and Eurocontrol requesting that we expand the scope of the proposal. The FAA did not propose TCAS II requirements for piston-powered airplanes because of the lack of performance capabilities for those airplanes. Although the commenters contend that there may be piston-powered airplanes that can effectively use TCAS II, they did not provide any specific make and model airplanes that they feel could safely respond to RAs. In further telephone discussion with ALPA, the FAA determined that the primary intent of the comment was to point out inconsistencies between the proposal and the existing passenger-carrying TCAS rule. ALPA wants ''one level of safety.''

The minimum rate of climb required to respond to a TCAS II RA is 1,500 feet per minute (f/m), with the ability to increase the rate to 2,500 f/m. The FAA did not conduct a study on the performance capabilities of piston-powered airplanes. However, the FAA does have extensive knowledge of and experience with piston-powered airplanes currently operating under part 121, weighing more than 33,000 lbs. MCTOW. (Most of those airplanes were manufactured in the 1940's and 1950's.) Based on that information, the FAA determined that those airplanes were not capable of meeting the performance standards to respond to a TCAS II RA under the worst-case situation for climb performance, *i.e.*, maximum gross weight, high temperature, high pressure altitude.

Further, the equipment and labor to install TCAS II can, in some cases, approach the value of the airplane. Most of those piston-powered airplanes are operated by small entities. For example, the conservative value of a DC–6 is approximately $500,000; whereas, the cost of installing TCAS II on that airplane could reach $180,000. That cost does not include down-time and training. This final rule provides a safe and economical solution for piston-powered airplanes weighing more than 33,000 lbs. MCTOW. The FAA has determined that it cannot justify including in this rule installation of TCAS II (or equivalent) on piston-powered cargo airplanes weighing more than 33,000 lbs. MCTOW and has adopted the rule as proposed.

Because the FAA will not include airplanes weighing 33,000 lbs. or less in this rule, we will maintain the existing passenger-seating rule language for any passenger-carrying airplanes other then those with more than 30 seats. As proposed, we updated the collision avoidance requirement for passenger-carrying airplanes to allow for collision avoidance systems equivalent to TCAS.

Eurocontrol advocates TCAS II for all airplanes, but recognizes that there could be operational differences between the United States and Europe that could support a need for TCAS I. In reference to the Eurocontrol study, the FAA appreciates Eurocontrol providing this preliminary study, which is in its beginning stages. We found the study interesting but are not convinced that these airplanes have the performance capability to respond to RAs as necessary. The FAA developed two levels of TCAS (TCAS I and TCAS II) since the 1980's for the sole purpose of relieving small airplanes from purchasing equipment that may not be more useful or safer for them. Many countries do not yet mandate TCAS at all, but those that do require TCAS II and only require it on those airplanes equivalent to our part 121 airplanes with more than 30 seats. In Europe, the first TCAS mandate for their largest airplanes did not occur until the year 2000. The next stage of the mandate occurs in 2005 when airplanes with more than 19 seats will be required to have TCAS II. They have not mandated anything for ''light'' aircraft. They are able to mandate ACAS II (TCAS II, version 7.0) for airplanes with more than 30 passenger seats (2000) and more than 19 passenger seats (2005) without a retrofit because it is the initial mandate in both cases.

Compared to Europe, the United States has a large community of smaller commercial airplanes transporting passengers and cargo. This rule to add cargo airplanes weighing more than

33,000 lbs. also includes the passenger-carrying airplanes because of the switch to weight; however, the seat definition in the current rule is compatible with the proposed weight definition. The decision has already been made to not require a retrofit of TCAS equipment from one version to another. Retrofits are very expensive and, in this case, the FAA does not find the benefit of a retrofit to be worth the cost.

In response to Northern Air Cargo's comment that we should accept all Capstone participants, we note that Capstone currently applies to Alaska only (specifically, Bethel, Alaska). Although the FAA is pleased with the progress made during the Capstone demonstration, ADS–B is not a collision avoidance system and we have not received any application for its FAA approval as a collision avoidance system. Currently, the ADS–B equipment installed for the Capstone project is not equivalent to TCAS I or TCAS II. It currently would not be an acceptable alternative to TCAS under this proposal either inside Alaska or outside Alaska.

Northern Air Cargo's DC–6 weighs more than 33,000 lbs. If the FAA had adopted the existing rule language and simply added cargo airplanes and used the weight threshold, the DC–6 would have needed TCAS II. This rule provides significant relief to operators of large piston-powered airplanes, including those that operate in Alaska by requiring only TCAS I.

Economic/Risk Analysis/Alternatives

Comments

Several commenters specifically address the costs and benefits of the rule, the risk analysis used, and some alternatives to reduce the cost of the rule.

Ryan suggests that our estimated cost of equipage for TCAS I is low, suggesting that the estimate left out the cost of the elements themselves. It also states that if Mode S is required for TCAS I installations, the costs would be even higher, and recommends that we remove the Mode S requirement for TCAS I installations.

The CAA suggests that we overstated the benefits and minimized the costs in our analysis. It quotes from the cost section of the NPRM that we did not include the cost of air carriers that have voluntarily equipped their fleets with TCAS or that are equipped with TCAS as required by foreign governments. However, it states that our benefits section assumes that no cargo aircraft are equipped with TCAS. It argues that the numbers used for the benefits section are either drawn from unknown sources or are misinterpretations of other existing documents. It recommends that we task MITRE Corporation to review the proposed rule and to submit comments on the benefits that the proposal might generate.

Another commenter indicates that the cost of installing TCAS on older piston-powered cargo aircraft is cost prohibitive. He believes this rule will ground these aircraft, putting small cargo aircraft companies out of business, depriving the public of much needed cargo service. He argues that these aircraft typically fly only a few hundred hours a year and are in their last 10 years' of service life.

USA Jet Airlines, Inc., questions the necessity of so many equipment requirements in the near future. It indicates that in the next 3 years, a DC–9 and Falcon operator will pay $250,000 per aircraft for TCAS II, $125,000 per aircraft for TAWS and a significant sum for the domestic RVSM system. It agrees that these systems have merit, but believes the cost of all the systems precludes implementation for many carriers.

UPS contends that the FAA misinterpreted the MITRE study, which the NPRM indicated that the risk of a mid-air collision with a passenger airplane in the United States would be reduced 17 percent if cargo airplanes were also equipped with TCAS. According to UPS, the study reported that the risk of a mid-air collision for passenger airplanes in the United States would be reduced by 1 percent. UPS criticizes the study for not calculating the reduction in the risk of passenger airplane runway incursion accidents if cargo airplanes were equipped with ADS–B.

UPS also believes that the benefits are uncorroborated. It believes that because the FAA did not quantify the benefit of TCAS equipage, it is not possible to calculate a cost-benefit. UPS further asserts that the mid-air collision risk over the next 20 years involving a cargo airplane (40 percent) is unsupported. It argues that because there has never been a mid-air collision in the United States involving a cargo airplane, it is difficult to comprehend how this value could have been computed.

FAA's Response

In response to Ryan's assertion that we left out the cost of TCAS I units, the FAA's cost estimate does include estimates for both equipment and installation costs. As noted above, TCAS I equipment does not need a Mode S to function, nor did we propose to require Mode S. Therefore, the cost of Mode S is not considered to be a cost imposed by this rule.

To address the CAA's comments, in the final rule regulatory evaluation, air-cargo carriers' voluntary compliance has now been factored into both the cost and benefit sections. A large percentage of air cargo carriers voluntarily complied with the rule, even before the publication of the NPRM. Both the costs and the benefits are reduced by the extent of voluntary compliance. The FAA finds it unnecessary to task MITRE Corporation since we have made the corrections.

In response to the individual operating older piston-powered cargo airplanes, as previously discussed, the FAA has reduced the burden for those airplanes from TCAS II to TCAS I as much as we can. In response to USA Jet Airlines, Inc., the FAA realizes there is a cumulative effect of rules; however, in this case, the FAA is required by Congressional mandate to issue this rule.

UPS questioned the validity of a 40-percent chance of at least one mid-air collision involving a cargo aircraft in the next 20 years. That probability refers to the value in the Poisson distribution table when the mean of the distribution is 0.5. The Poisson distribution is an accepted probability distribution for rare events. Just because a collision has not occurred does not mean that the probability of a collision occurring is zero. The economic evaluation discusses the impact of near-miss situations on the FAA's analysis.

The 17-percent and 1-percent reduction in risk estimates, as mentioned in the full regulatory evaluation, are both correct. The MITRE study, which is in the docket, reports (pages 49 and 50), ''If cargo aircraft were TCAS-equipped this relative risk would drop to 0.058 (as compared to the pre-TCAS baseline situation when no aircraft was TCAS-equipped). This corresponds to a Risk Ratio of 0.058/0.070 = 0.828, which roughly corresponds to a 17-percent reduction compared to the current risk. The small proportion of encounters involving one passenger and one cargo aircraft means that equipping cargo aircraft with TCAS would only reduce the risk to the passenger aircraft by another one percent.''

In response to UPS's assertion that the benefits of the rule are uncorroborated, the FAA sponsored a MITRE study to assist in the risk assessment of a mid-air collision. That report provided the basis of the safety benefits for collision avoidance for cargo aircraft. We made that study available in the docket, we provided a risk assessment, and we

presented a reasoned determination that the benefits justified the costs. It was not MITRE's task at the time of the study to address ADS–B.

Commenters responding to this rule have criticized us for not having enough accident data to justify the rule. In issuing this collision avoidance systems rule, we are being proactive about preventing accidents, rather than waiting for comprehensive mid-air collision data to give us overwhelming justification for this rule. Since the NPRM was published, a mid-air collision occurred in Germany on July 1, 2002, involving a DHL cargo Boeing B–757 and a passenger-carrying Tupelov Tu–154. Both aircraft were equipped with ACAS II (TCAS II version 7.0). German authorities also reported that data from the aircraft Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR) indicated that both ACAS II systems alerted the flight crews and displayed coordinated RAs. The B–757 descended in response to its RA, but the Tu–154 did not climb in response to its RA. Rather, it descended in response to air traffic control instructions. The accident is under investigation and the probable cause is unknown at this time.

Paperwork Reduction Act

Information collection requirements in the amendment to parts 121, 125, and 129 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB control Nos. 2120–0008 and 2120–0085. The potential paperwork burden is any recordkeeping required to maintain the list of those pilots who have completed training and are certified as to their proficiency on the collision avoidance system operation. These recordkeeping requirements already are covered under the Paperwork Reduction Reports entitled ''Operating Requirements; Domestic, Flag, and Supplemental Operations'' and ''Certification and operations: Airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 lbs. or more; and rules governing persons on board such aircraft.''

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 Office of Management and Budget (OMB) control number.

International Compatibility

International Standards and Recommended Practices (SARPs), Annex 6 to the Convention on International Civil Aviation, Part I, seventh edition, July 1998 has the following four recommendations addressing collision avoidance systems:

6.18 Aeroplanes Required to be Equipped with an Airborne Collision Avoidance System (ACAS II).

6.18.1 From 1 January 2003, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 15,000 kg. or authorized to carry more than 30 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.2 From 1 January 2005, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 5,700 kg. or authorized to carry more than 19 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.3 Recommendation.-All aeroplanes should be equipped with an airborne collision avoidance system (ACAS II).

6.18.4 An airborne collision avoidance system shall operate in accordance with the relevant provisions of Annex 10, Volume IV.

FAA Discussion of ICAO SARPs

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO SARPs to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences.

The FAA agrees that ICAO should actively encourage the use of ACAS II, which is equivalent to TCAS II version 7.0, and agrees in principle with the SARPs. However, the FAA is concerned that some aspects of the SARPs may be unrealistic. ACAS II is appropriate for large, transport category airliners, which have been successfully using TCAS II version 6.04A Enhanced in the United States for several years. However, some small airplanes lack the performance capability to respond to RAs provided by ACAS II (TCAS II version 7.0) and therefore would receive no benefit from the recommendation. The FAA believes that this rule provides a reasonable alternative for those airplanes for which ACAS II would be inappropriate. The FAA has considered the aerodynamic capability of certain airplanes and does not agree that ACAS II/TCAS II is the appropriate level for smaller airplanes. The FAA currently mandates TCAS I for airplanes with 10–30 passenger seats and has done so for more than a decade. Many of the 10–30 passenger-seat airplanes currently equipped with TCAS I weigh less than 5,700 kg. (12,500 lbs.). The FAA also has considered the cost of installing equipment that cannot be fully utilized by certain airplane operators.

The FAA desires that all TCAS II/ACAS II users have the latest version (version 7.0) and the FAA believes that TCAS II version 7.0 has additional benefits. However, many airplanes currently required to have TCAS II have had version 6.04A Enhanced installed for several years. The purpose of this rule is to capture cargo airplanes for the first time, not to create retrofits for passenger airplanes. This rule allows airplanes that already are equipped with TCAS II version 6.04A Enhanced to continue using that version until those particular units can no longer be repaired to TSO C–119a standards. Air carriers that are installing TCAS II for the first time must equip their applicable airplanes with TCAS II version 7.0. Eventually, airplanes operating under parts 121, 125, and 129 that are required to have TCAS II would be required to be equipped with TCAS II version 7.0. This is because operators will need to replace version 6.04A Enhanced units when old units wear out, or they will choose to operate in RVSM airspace or in foreign countries that require version 7.0.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or

more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined:

(1) This rule has benefits that justify its costs. This rulemaking does not impose costs sufficient to be considered ''significant'' under the economic standards for significance under Executive Order 12866 or under DOT's Regulatory Policies and Procedures. Due to public interest, however, it is considered significant under the Executive Order and DOT policy.

(2) This rule will have a significant impact on a substantial number of small entities.

(3) This rule is in accord with the Trade Agreement Act.

(4) This rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The FAA placed these analyses in the docket and summarizes them below.

Benefits of the Final Rule

Introduction

The implementation of this rule contributes to a long-standing effort by the Congress, the FAA, international aviation authorities, and industry to increase the use of Collision Avoidance Systems (CAS). Specifically, the expected benefit of this rule is a reduction in the risk of midair collisions involving at least one cargo airplane.

There are many levels of safety built into the Air Traffic Control System that guard against the risk of midair collision. However, when human errors by pilots or controllers, or equipment failures occur, safety margins erode. In some instances, separation between aircraft is lost. Many different factors apply in such cases. There are such a variety of circumstances that it appears no single measure can entirely eliminate the risk of midair collision.

Traffic Alert and Collision Avoidance System (TCAS) has been proven effective in providing additional protection against collision. TCAS was designed to supplement the safety margins of the ATC system by providing protection when other means fail. At present, TCAS is required in certain passenger-carrying airplanes and has also been voluntarily installed on some general aviation (primarily business) aircraft. In addition to the United States requirements, Europe, India and, recently China require collision avoidance systems. Within the air cargo industry, Northwest Airlines and Polar Air Cargo have already equipped their cargo airplanes with TCAS II and the all-cargo airlines Airborne Express and FedEx are voluntarily equipping their fleets with TCAS II. This voluntary compliance reduces the benefits of this final rule from those cited in the NPRM.

Commenters' reports, Near Midair Collision (NMAC) filings, and the National Transportation Safety Board (NTSB) recommendations attest to occasions where safety benefits improved by using TCAS equipment. Often, these reports suggest that TCAS served as the final safety net that prevented an accident. A pilot's and a controller's view of a situation may differ, particularly in the degree of imminent danger associated with a loss of separation.

The potential benefits of TCAS II have been studied by extensive computer simulations and validated by tens of millions of hours of operational experience. These safety benefits have been recognized by the International Civil Aviation Organization (ICAO) in its worldwide recommendation for TCAS II installation, which affects both passenger and cargo carriers.

The worst midair collision occurred between a cargo airplane and a passenger airplane in India with nearly 350 fatalities. At the time of this writing another midair collision occurred with a cargo airplane and a passenger airplane in Europe. This most recent accident is a painful reminder that such accidents do occur.

A Look at the Environment

Although no passenger air carrier airplanes have been involved in a midair collision since they were required to carry TCAS II, other types of airplanes continue to experience midair collisions. During the period 1994–1997, 61 midair collisions in the U.S. airspace have occurred resulting in 92 fatalities and 26 injuries. No collision involving a cargo airplane (which would be affected by this rule) occurred, but the following describes a recent near miss.

Two U. S. cargo airline airplanes nearly collided at flight level 330 over Kansas on March 2, 1999. A McDonnell Douglas cargo DC–10 had departed from Portland, Oregon, and was enroute to Tennessee. The other airplane was a cargo Lockheed L–1011 that had departed from Los Angeles, California, and was proceeding to Indiana. The minimum distance between the two airplanes at the time of the near-collision was reported as a quarter-mile (ATC recorded radar data) or 50–100 feet (crewmember estimate). The DC–10 captain reported that he never saw the L–1011 approaching. The L–1011 crewmembers saw the DC–10 to the left and slightly behind them at nearly the same altitude and took evasive action to avoid a collision.

The (NTSB)'s investigation of the NMAC determined that air traffic controllers in two different air route traffic control centers failed to properly transfer control and radio communications for each airplane to the next sector that the flights would fly through according to their flight plans. As a result, both airplanes were not on the proper radio frequency (were under no one's control) as their flight paths converged at the same altitude over Kansas. While ATC was aware of the pending conflict, the controllers were unable to issue control instructions to separate the two airplanes, because they could not communicate with the flight crews on the proper radio frequency.

The NMAC also highlighted a difference in the TCAS requirements between passenger and cargo airplanes. Currently, regulations require passenger carrying airplanes with more than 30 passenger seats operating in U. S. airspace to be equipped with TCAS II which alerts flight crews of potential conflicts and, if necessary, instructs them to climb or descend to resolve the conflict. Cargo airplanes receive no TCAS information because they are not currently required to be equipped with TCAS. This could cause a potential safety hazard because a cargo pilot without the advantage of a TCAS RA may inadvertently select the same response as the RA provided to the passenger airplane pilot.

Risk Assessment

The above discussion outlines in general terms the benefits of equipping airplanes with TCAS II. In an effort to place these benefits in a more quantified context, the FAA performed the following risk assessment based on a study performed by MITRE.[1]

The scant air cargo airplane data in the United States on midair collisions and NMACs does not allow a definitive analysis of the numbers of accidents likely to be avoided by installing TCAS on cargo airplanes. Fortunately, there has been no actual midair collisions in U.S. airspace involving cargo airplanes affected by this rulemaking action. However, it does not follow from this circumstance that the risk of a midair collision involving a cargo airplane is zero.

The following risk assessment attempts to arrive at a reasonable approximation of the risk of a MAC

[1] The Mitre study, ''Assessment of Midair Collision Risk and Safety Benefits of TCAS II for Cargo Aircraft'', June, 1999, is available in the public docket for this rulemaking action.

involving at least one cargo airplane under the following circumstances:

1. The current situation—no requirement for collision avoidance systems on cargo airplanes, and

2. The reduction in risk with the implementation of this final rule.

To do this, the FAA combined the risk reduction estimates developed by MITRE, with the FAA's estimate of risks.

Assumptions

The estimates derived by Mitre depend on a number of simplifying assumptions. These assumptions are believed to be consistent with the level of accuracy that can be achieved when estimating the probabilities of such rare events as midair collisions or NMACs.

The two major assumptions are:

1. Exposure to a possible midair or near-midair collision is assumed to be approximately proportional to the number of airplane pairs flying through the same airspace at about the same time. The number of pairs increases in proportion to the square of the number of airplanes.

2. The NMAC risk reduction estimates documented in the Safety Analysis of TCAS II Version 7, which were derived from airplane track data collected at major terminal areas for passenger flights, also apply to cargo airplanes.

Pre-TCAS II Accident Rates

This section discusses the risk of cargo airplane midair collisions (MAC)s. The risk is the expected number of cargo airplane MACs with another cargo airplane, a commercial passenger airplane, or a general aviation airplane. Due to general aviation data limitations and the fact that passenger airplanes are presently equipped with TCAS, this assessment of risk is limited to that of cargo/cargo MAC. While to date there has not been a MAC involving a cargo airplane in the United States, there were two near midair collisions (NMAC) with cargo airplanes in 1999. The FAA believes there is a small, but significant, risk. Several methodologies are presented below which provide an approximation of the number of cargo airplane MACs that may occur in the future if cargo airplanes are not equipped with collision avoidance devices.

Passenger midair accidents have occurred. In the FAA's 1988 regulatory analysis of TCAS on passenger airplanes, it was noted that during the 15 years before the use of TCAS on airplanes, two midair collisions occurred, each of which involved at least one large air carrier passenger airplane. Accordingly, at that time the rate of 2 MACs per 15 years was used as the estimate of future incidence in the absence of TCAS. By extending the time period to 20 years to coincide with the cost-analysis reference period of this analysis, the rate increased to 2.67. Because there are substantially fewer cargo airplanes than passenger airplanes operating in the United States, a rate of 2.67 defines the upper bound as the rate of MAC involving cargo airplanes. The actual rate is probably substantially less than this upper bound. The FAA has used this figure, however, as a basis for several different methods to approximate the actual risk. These methods include a direct ratio of numbers of aircraft, and proportions of pairs of both cargo aircraft and cargo operations. Taken together, the agency believes that the results of these methods define a reasonable approximation of the range of the actual risk.

In the next 15 years the average number of operating cargo airplanes is projected to be about 1,545, or nearly 50 percent of the average number of passenger airplanes (3,230) that operated between 1973 and 1987. If the MAC risk were solely a function of the number of airplanes, then the cargo MAC risk in the next 15 years could be considered to be 1.0 MAC (50 percent of 2.0). This approximation however is likely to overstate the actual risk, as cargo operations per airplane are lower than that of passenger airplanes. If the ratio of cargo to passenger departures-per-airplane remains roughly that of today (between .33 and .40), then multiplying the value of the departure-per-airplane ratios by 1.0 accidents results in range of .33 to .40 MACs for 15 years, or nearly .44 to .53 MACs over 20 years.

From a slightly different perspective, another approximation can be derived from information on the number of airplane pairs (a collision potential). As the number of years, and as the number of airplane pairs increase, the likelihood of a collision increases. The number of pairs can be calculated for the relevant period.[2] Over the 1973 to 1987 time period, the average annual number of in-service passenger airplanes was approximately 3,230. Over the fifteen-year period 2000 through 2014, the average number of cargo airplanes is projected to be about 1,545. Based upon the assumption that risk is a function of the number of aircraft squared, the estimate of a MAC risk to cargo airplanes not equipped with collision avoidance equipment is estimated as $2.0 * (1{,}545)^2/(3{,}230)^2 = 0.45$ accidents in 15 years, or approximately 0.60 accidents in 20 years.

A different application based on numbers of operations provides an effective lower bound of the likely range of risk for a cargo MAC. Total revenue departures summed from 1974 through 1988 (1973 data are not available) are 79.1 million. For a 15-year period from 2000 through 2014 total cargo airplane departures are assumed for this analysis to grow at a 5 percent annual rate on an estimated base of 645,000 departures in 1999. These total cargo departures sum to 14.6 million. Based upon the assumption that risk is a function of the number of operations squared, the estimate of a cargo MAC is approximated as $2.0 * (14.6)^2/(79.1)^2 = 0.07$ accidents in fifteen years. An additional five years raises this risk to nearly 0.1 accidents.

The above methodologies provide a range from 0.1 to 0.6 mid air collision involving a cargo airplane over twenty years. Admittedly, these models are simplified representations of complex interactions of many other excluded factors such as the time of day, weather, airway congestion, hub concentration, and perhaps pilot error or malfunctioning airplanes. It is clear, regardless of methodology that the risk is low, but it is not zero.

The Poisson probability distribution is often used to analyze rare and random events, and may be useful here. If 0.1 is assumed as the mean of a Poisson distribution, there is a 10 percent chance that there will be one or more mid air collisions involving a cargo airplane during the twenty-year period. If the actual risk rate is 0.6 MACs over 20 years, there is nearly a 50 percent probability that there will be at least one MAC, and slightly more than a 10 percent chance there will be two or more. Such a level of risk is unacceptable.

The benefit sensitivity section will show the potential range of outcomes reflecting the above accident rate variation discussion. For the purpose of the analysis and to ease presentation, the FAA uses a single estimated rate of 0.5 MACs involving a cargo airplane over the next 20 years if they are not equipped with collision avoidance devices.

Risk Reduction—Cargo Airplane Perspective

The following table (Table 4–11 of the MITRE report) shows the MITRE

[2] The number of pairs involving airplanes from the same population (cargo/cargo) can be calculated using the formula: $N = n(n - 1)/2$. For large numbers this formula can be approximated by: $N = nn/2$ for comparisons among different assumptions of the number of airplane pairs involved.

derived pair probabilities conditioned on encounters involving at least one cargo airplane as well as the relevant TCAS risk reduction factors.

RISK REDUCTION FOR CARGO AIRPLANES

	Cargo/cargo	Cargo/GA	Cargo/ passenger	Cargo/ unspecified
Conditional pair probability	0.324	0.174	0.503	1.000
Risk—when cargo is *not* TCAS-equipped	1.000	1.000	0.092	0.544
Risk—when cargo *is* TCAS-equipped	0.023	0.092	0.023	0.035

The current risk to cargo airplanes when they are not TCAS equipped and passenger airplanes are equipped with TCAS II is 0.544 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This risk reduction occurs because the equipage of passenger airplanes with TCAS II has already reduced the risk to cargo airplanes. Even though the cargo airplanes are not equipped with TCAS II, the passenger airplanes can see the cargo airplanes on their cockpit displays. This reduces the risk to both passenger and cargo airplanes.

If cargo airplanes were to be TCAS II equipped, this remaining relative risk would drop to 0.035 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This results in a comparative risk ratio of 0.035/0.544=0.064, which roughly corresponds to a 94 percent reduction (0.544 ‘‘ 0.035)/.544 = .936) compared to the present risk. In other words, cargo airplanes could experience a reduction in their NMAC risk by about 94 percent as compared to the current risk by installing TCAS II.

Risk Reduction—Passenger Airplane Perspective

For passenger airplanes that already have TCAS II, the perspective is considerably different because the cargo airplanes would represent only a small portion of their potential close encounter traffic. The following table (Table 4–12 in the MITRE study) shows the MITRE derived pair probabilities conditioned on encounters involving at least one passenger airplane as well as the relevant TCAS risk reduction factors.

RISK REDUCTION FOR PASSENGER AIRPLANES

	Passenger/c	Passenger/	Passenger/p	Passenger/u
Conditional pair probability	0.076	0.281	0.643	1.000
Risk—when cargo is not TCAS-equipped	0.092	0.092	0.023	0.070
Risk—when cargo is *not* TCAS-equipped	0.023	0.092	0.023	0.058

Combining these risks in a weighted manner according to the conditional pair probabilities shown in the first row of the above table, the risk to passenger airplanes when cargo airplanes are not TCAS-equipped is reduced by 93 percent to 0.070 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). If cargo airplanes were to be TCAS-equipped this relative risk would drop to 0.058 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This corresponds to a Risk Ratio of 0.058/0.070=0.828, which roughly corresponds to a 17 percent reduction (0.070 ‘‘ 0.058)/0.070 = 0.171) compared to the current risk to passenger airplanes.

The small proportion of encounters involving one passenger and one cargo airplane means that equipping cargo airplanes with TCAS would only reduce the risk to the passenger airplanes by another one percent (reducing the 0.070 risk by 17 percent) beyond the 93 percent already enjoyed through their TCAS equipage. Therefore, the total risk reduction for passenger airplanes from the installation of TCAS II on both passenger and cargo airplanes would be approximately 94%. Coincidentally, this is the same reduction as the risk reduction to cargo aircraft going to TCAS from no TCAS protection. This should be kept in mind to avoid confusion in understanding the following analyses.

Post-TCAS II On Cargo Airplanes Accident Rates

Without TCAS II on all-cargo airplanes, the approximated MAC rate adopted in the previous section, for this analysis, was 0.5 MACs per 20-year period for all-cargo airplanes. The above analysis indicated that the installation of TCAS II on all-cargo airplanes will reduce the risk of all-cargo airplane NMACs by 94 percent. This will reduce the MAC rate for all-cargo airplanes to 0.06×0.5 or 0.03 per 20-year period.

If this rule were implemented, MITRE estimates that passenger airplanes will experience approximately a 17 percent risk reduction, or the risk factor for passenger airplanes will be reduced from 0.07 to 0.058.

One way to make these probabilities more meaningful is through the use of a Poisson probability distribution, a statistical tool often employed to describe rare events. If the factors for cargo airplane midair collisions (0.5 for the cargo fleet without TCAS and 0.03 for the cargo fleet with TCAS) are assumed to be the mean values of the Poisson probability distribution, then those distributions imply that in the absence of this rule there will be a 40 percent chance that one or more midair collisions involving a cargo airplane will occur in the U.S. airspace within the next 20 years. On the other hand, this rule will reduce that likelihood of a midair collision involving cargo airplanes to a 1 percent chance.

If this rule were implemented, MITRE estimates that passenger airplanes will experience approximately a 17 percent risk reduction, or the risk factor for passenger airplanes will be reduced from 0.07 to 0.058. This small reduction in the risk of a passenger and cargo airplane colliding is a direct result of passenger airplanes already being equipped with collision avoidance systems (TCAS II) and because the cargo fleet is much smaller than the passenger fleet. None-the-less, a real reduction in the risk to passenger airplanes occurs when cargo airplanes are equipped with collision avoidance systems.

Risk Assessment Summary

The above calculations are probabilistic estimates and are not precise calculations. These estimates are intended to convey a sense of the reduced MAC risk that will result from this rule. The rule will result in reduced collision risk to all types of airplanes with the greatest risk reduction benefiting cargo airplanes.

Quantifiable Benefits of Collision Avoidance Systems for Air Cargo Airplanes

Introduction

This section quantifies, to the extent possible, the expected dollar benefits of installing CAS on cargo airplanes. The process is to determine the risk of a MAC between different types of airplanes, incorporate the expected number of accidents without the final rule, estimate the cost of potential accidents, and finally estimate the expected loss.

Accidents: Risk

Earlier in the benefits analysis the FAA estimated that the number of cargo airplane MAC's will be 0.5 accidents in a 20 year time period. The risk of a cargo airplane MAC with another airplane depends on the pairs of airplanes present in the same airspace at about the same time and whether such airplanes have a CAS. This section estimates the risk of a cargo airplane MAC with another airplane.

MITRE computes the conditional pair probabilities of three combinations of airplanes that fly in the same U.S. airspace at about the same time. In this case, a conditional pair probability is a pair of airplanes where at least one of the airplanes is a cargo airplane. It is assumed that the risk of a near midair collision (NMAC) is proportional to the pair probabilities. The risk of a NMAC is used rather than the risk of a MAC, because most of the statistical models used in studying the safety of TCAS II were derived from encounter data and not from MAC data. Accordingly, risk reduction estimates from equipping cargo airplanes can be obtained by multiplying the pair probability of each relevant pair by the risk reduction factor associated with collision avoidance equipage.

There are three cargo airplane potential MAC combinations: a cargo airplane and another cargo airplane, a cargo airplane and a general aviation airplane, and a cargo airplane and a passenger airplane. MITRE calculated that the conditional pair probability for two cargo airplanes is 0.324, for a cargo and general aviation airplane, 0.174, and for a cargo and passenger airplane, 0.503 (Row 1 of Table V–1 in the full Regulatory Evaluation).

These conditional pair probabilities are based on cargo airplane proximity with other airplanes. However, passenger airplanes are already equipped with CAS, thereby reducing their risk of a MAC. The cargo/passenger conditional pair probability is multiplied by the MITRE-estimated passenger-equipped CAS risk ratio of 0.092 to obtain the NMAC cargo/passenger conditional risk probability (Row 3 of Table V–1 in the full Regulatory Evaluation). This calculation results in a cargo/passenger NMAC probability of 0.046 and a total NMAC risk of 0.544 for all combinations (Row 3, Column 4 of Table V–1 in the full Regulatory Evaluation). Finally, the percentage of risk by equipment (Row 5) is determined by dividing the conditional pair probabilities (Row 3) by 0.544. Then, given that there is a cargo airplane MAC, approximately 60 percent of these accidents will be with a cargo airplane, 32 percent will be with a general aviation airplane, and 9 percent will be with a passenger airplane.

The expected number of accidents without the final rule has previously been estimated to be 0.5 over the next 20 years. Multiplying this expected number of cargo accidents by the percentage of risk (or probability in Table V–1 in the full Regulatory Evaluation) by equipment results in the expected number of accidents by equipment. Thus the expected number of cargo airplane MAC accidents without this final rule equals 0.298 with another cargo airplane; 0.160 with a general aviation airplane; and 0.043 with a passenger airplane.

Expected Costs of Accidents

The expected costs of a cargo airplane MAC is equal to the probability of such an accident with another airplane multiplied by the value of averted fatalities and equipment, plus the collateral damages. Unlike accidents occurring on an airport, it is assumed that a midair collision will result in fatalities for all passengers and crew, rather than some percentage attributed to various classifications of injuries. The value per averted fatality is estimated to be $3.0 million. This estimate increased from the $2.7 million used in the IRE because the Department of Transportation increased this value for benefit/cost analysis purposes. Cargo airplanes are valued here at $5 million each with 2 crew for each airplane resulting in an estimated benefit of $22 million per averted MAC. An averted cargo airplane MAC with a general aviation airplane is valued at $23.5 million, with the general aviation (GA) airplane valued at $500,000 with one GA pilot and with three GA passengers. Given the wide range of seating for commercial airplanes, herein the FAA uses a representative 150-seat airplane with a 75 percent load factor. With such a passenger airplane valued at $30 million dollars, then an averted midair collision with a cargo airplane is valued at $396.5 million. The expected averted value of a cargo airplane MAC then is the percent of expected accidents by equipment multiplied by the value of the averted accidents, summed for the three possible cases, or approximately $27 million in a 20 year time period.

Collateral damage is the damage on the ground that occurs as a result of a MAC. Collateral damage may be the greatest cost of a MAC. However, the costs of collateral damage are very dependent on where the accident occurs. If the MAC occurs over a relatively unpopulated area, the costs of the collateral damage may be relatively low. However, even in unpopulated areas collateral damage can be serious and costly. For example, collateral damage from a MAC could start a fire with ensuing damage. The FAA assumed a low collateral damage estimate of $1 million, essentially a couple of buildings and no loss of life.

The expected total averted loss equals the sum of expected accident loss by equipment plus the $1 million collateral damage. This estimate is very conservative in not including emergency response and legal/court costs estimated at approximately $120,000 per averted fatality. The total expected loss is approximately $28 million over twenty years. However, operators of approximately 65 percent of the existing cargo fleet have voluntarily equipped their airplanes with TCAS. Therefore, only 35 percent of the fleet will undergo the costs of installing TCAS purely as a result of this rule. Reflecting the voluntary compliance of 65 percent of the air cargo fleet, the total benefit of this rule is reduced to approximately $10 million ($28 million multiplied by .35).

Sensitivity Analysis

The estimated benefit of $10 million is the product of an expected accident rate, the percent of the fleet whose operators have not voluntarily complied, and the expected preventable loss of a midair collision with a cargo airplane and another airplane. As the above discussion just outlined the value of a preventable midair collision is many times greater than $10 million.

This section discusses how sensitive the benefit estimate is to changes in the expected number of accidents.

The above discussion uses a 0.5 expected number of accidents throughout. Earlier in the Pre-TCAS II Accident Rate section the FAA outlined four different methods to establish a reasonable expected number of midair collisions involving a cargo airplane. If the cargo accident rate equaled that of the passenger airplane rate used in the FAA 1988 regulatory analysis of TCAS on passenger airplanes, the expected number of midair collisions involving a cargo airplane was 2.67 accidents over 20 years. The FAA believes that figure is too high, nevertheless 2.67 was the high estimate. The lower bound estimate of 0.1 was based on total cargo departures.

If the accident rate equals 2.67 accidents, instead of 0.5, then the expected benefits increase from $10 million to $53.4 million. On the other hand if the accident rate is 0.1 the expected benefits decrease to $2.0 million.

To further develop the sensitivity range, the expected benefit is based just on a cargo airplane colliding with just one of the three possible airplane types. If the number of expected accidents is 2.67 and the cargo airplane collides with an average passenger airplane, the expected benefit is $370.5 million. If the number of expected accidents are 0.5 and the collision occurs between two cargo airplanes, the expected benefit is $4.9 million. If the expected accidents are 0.1 and the air cargo airplane collides with a general aviation airplane, the expected benefit is $1.1 million.

The sensitivity analysis reveals that various conservative changes to key parameters lower the expected benefits, but these values are relatively close to the base case of $10 million. On the other hand, changing the parameters to the high end of the range results in substantial increases in estimated benefits. Even though the FAA believes the higher estimates are not likely, the decision risk here is not to underestimate key parameters.

Number of Near Mid Air Collisions (NMAC's)

Unfortunately, the risk of a MAC as measured by NMACs has not declined. Table V–2 in the full Regulatory Evaluation shows the reported number of NMAC's involving at least one cargo plane during the ten year period 1992 through 2001. During this period, there has been a total of 28 NMAC's, or about 3 NMAC's per year. The number of NMAC's has ranged from a low of zero in 1993 and 1995 to a high of six in 2001. Six NMAC's is particularly troubling given the most recent MAC and the 1999 NMAC with the DC–10 and L1011 cargo airplanes where an eyewitness said that the airplanes were 50 to 100 feet apart.

Summary of Benefits

This final rule requires that all part 121, 125, and 129 airplanes with a MCTOW greater than 33,000 pounds, operating in the U.S. airspace be equipped with a collision avoidance system. The rule will provide an airspace where virtually all large airplanes are protected by Collision Avoidance Systems which, in turn, reduces the risk of mid-air collisions involving at least one cargo airplane. Further, this reduction in risk could avert an accident with a cost savings many times the greater than the cost of compliance. The recent midair collision in Europe is a sad reminder that reductions in probability and associated benefit estimates pale next to the human and monetary costs of an actual tragedy.

This final rule also responds to a Congressional mandate, responds to the petition for rulemaking from the Independent Pilots Association, responds to NTSB Safety Recommendations, and responds to the hundreds of professional airline pilots who commented on the NPRM requesting that this rule be implemented as soon as possible.

Costs of the Final Rule

Part 121 All-Cargo Operator Costs

The estimated part 121 cargo operator compliance costs include equipment, installation, additional maintenance and operating costs, and pilot training costs. After reviewing the information received from manufacturers and carriers, the FAA concluded that the original unit cost data used in the NPRM are still valid. However, since the NPRM was published, the affected fleet has changed and in the final rule the FAA extended and revised the compliance date from 3 years to an estimated 2 years October 31, 2003, to December 31, 2004. Therefore, the total cost of the final rule differs from that of the NPRM because of the change in the number of affected airplanes and the reduction in the compliance time.

The three TCAS II manufacturers reported that the average cost of TCAS II elements, as described above, for a transport category cargo airplane is between $130,000 and $200,000. One company indicated that if purchased in quantity, the cost of a TCAS II system would be between $80,000 to $145,000 per airplane. The manufacturers also estimated that it would cost between $50,000 and $70,000 (depending upon the specific airplane model) to install a TCAS II unit on an existing airplane. This resulted in a possible range of prices for a TCAS II system installed in an existing airplane of $130,000 to $270,000, or an average of $200,000. The actual price would depend on a number of factors, including: (1) The type of unit installed, (2) the number of units ordered, and (3) whether or not it was necessary to include a display unit in the purchase price. Some airplanes may not need a separate TCAS display unit because the TCAS information can be displayed on an airplane's existing EFIS (Electronic Flight Information Display System).

Based on these reported costs, for cost calculating purposes, the FAA used $211,000 for the initial costs of installing a TCAS II system into an existing airplane. This figure is estimated to include the necessary spare parts inventory.

To calculate the total discounted present value of the compliance costs of this final rule, the FAA assumed that, given a 2-year time period to install TCAS for the first time, the cargo air carrier would minimize its airplane's time out-of-service by installing TCAS II during a regularly scheduled major maintenance (C or D) check. The FAA further assumed that equipping the total existing air cargo fleet would be spread evenly over the entire 2-year compliance period due to potential maintenance scheduling conflicts and potential maintenance personnel overtime if every cargo air carrier were to try to schedule this installation in year 2. The FAA estimates that the undiscounted initial capital costs of retrofitting the existing part 121 turbine-powered all-cargo fleet with TCAS II will be approximately $67,000,000.

The three TCAS II manufacturers reported that the TCAS II element costs would be identical for new and for existing airplanes. The FAA estimates that the initial (equipment plus installation) cost per newly manufactured cargo part 121 turbine-powered airplane will be $171,000.

Based on 80 newly manufactured cargo airplane purchases over the 20-year analysis period, the FAA has estimated that the total non-discounted initial costs for purchasing and installing TCAS II in newly manufactured part 121 turbine-powered cargo airplanes will be approximately $14 million.

In addition to the initial costs of the TCAS II units, the air carriers will also incur annual operation and

maintenance (O&M) expenses. The FAA estimates the annual O&M expenses for TCAS II units to be $1 per flight hour. Based on an estimated utilization rate of 2,000 hours per airplane per year, and the fleet flight hours estimated in the Regulatory Evaluation, the FAA estimates that the total non-discounted O&M expenses for the existing fleet will be approximately $12,000,000 and $2,000,000 for the newly manufactured fleet.

The TCAS II equipment will increase the airplane's weight and, thereby, will increase the airplane's annual fuel costs to transport the additional weight. The FAA estimates that the incremental fuel costs resulting in the weight added by the TCAS II system will be approximately $0.36 per flight hour. This results in a total non-discounted incremental fuel cost of approximately $4,000,000 for the existing fleet and $605,000 for the newly manufactured fleet.

Air cargo flight crewmembers who have not trained on TCAS II will need such training to obtain the necessary knowledge, skills, and abilities to safely conduct operations in a TCAS II environment. The FAA estimates that the cost of pilot training will be approximately 0.05 times the cost of the TCAS unit itself. This results in a training cost of approximately $7,000 per unit per year. The total non-discounted cost of pilot training, for the 20-year analysis period, is estimated to be approximately $43,000,000 for the existing fleet and $6,000,000 for newly manufactured cargo airplanes.

The FAA estimates that the total undiscounted TCAS II costs of the final rule, for the existing part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $127,000,000. We also estimate that the discounted present value of the total costs of the final rule, for the existing part 121 turbine-powered all-cargo fleet over the next 20 years, will be approximately $92,000,000.

The FAA estimates that the total undiscounted TCAS II costs of the final rule, for the newly manufactured part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $22,000,000. We also estimate that the discounted present value of the total costs of the final rule, for the newly manufactured fleet over the next 20 years, will be approximately $11,000,000.

Thus, the FAA estimates that the total undiscounted costs of the final rule for the existing and future manufactured part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $149,000,000. The discounted present value of the total costs of this portion of the final rule over the next 20 years will be approximately $102,000,000.

The final rule requires the installation of TCAS I, (or equivalent), on all part 121 piston-powered cargo airplanes with a MCTOW greater than 33,000 lbs. The FAA estimates that the total initial and installation costs of TCAS I on an existing part 121 cargo piston-powered airplane would be approximately $75,000. This figure is estimated to include the necessary spare parts inventory.

To calculate the total discounted present value of the compliance costs of the final rule, the FAA assumed that, given the 2-year time period to retrofit TCAS I equipment, the cargo air carrier would minimize its airplane's time out-of-service by installing TCAS I during a regularly scheduled major maintenance (C or D) check. The FAA further assumed that equipping the total air cargo fleet would be spread evenly over the entire 2-year compliance period due to potential maintenance scheduling conflicts and potential maintenance personnel overtime if every cargo air carrier were to try to schedule this installation in year 2. The FAA estimates that the undiscounted initial costs of retrofitting the existing part 121 piston-powered all-cargo fleet greater than 33,000 lbs. MCTOW with TCAS I will be approximately $2,000,000. In addition to the capital costs of the TCAS I units, the air carriers will also incur annual O&M expenses. The FAA estimates that the annual O&M expenses for TCAS I units to be $1 per flight hour. Based on an estimated utilization rate of 2,000 hours per airplane per year, the FAA estimates that the total non-discounted O&M expenses for the existing fleet will be approximately $1,000,000.

The TCAS I equipment will increase the airplane's weight and, thereby, will increase the airplane's annual fuel costs just to transport the additional weight. The FAA estimates that the incremental fuel costs resulting in the weight added by the TCAS I system will be approximately $0.36 per flight hour, based on the weight of TCAS II. This results in a total non-discounted incremental fuel cost of approximately $365,000 for the existing fleet.

Air cargo flight crewmembers who have not trained on TCAS I will need such training in order to obtain the necessary knowledge, skills, and abilities to safely conduct operations in a TCAS I environment.

The FAA estimates that the cost of pilot training will be approximately 0.05 times the cost of the TCAS unit itself. This results in a training cost of approximately $3,800 per unit per year. The total non-discounted cost of pilot training for the 20-year analysis period is estimated to be approximately $3,500,000 for the existing fleet.

The FAA estimates that the total undiscounted TCAS I costs of the final rule, for the existing part 121 piston-powered all-cargo fleet during the 20-year analysis period, will be approximately $7,000,000. The discounted present value of the total costs of the final rule for the existing fleet over the next 20 years will be approximately $4,000,000.

It is anticipated that the existing part 121 fleet that will require TCAS I installation as a result of this final rule will not change in the study period. Therefore, the FAA does not expect additional costs.

The FAA estimates that the total undiscounted costs of the final rule for the part 121 all-cargo fleet, during the 20-year analysis period, will be approximately $156,000,000. The discounted present value of the total costs of the final rule for part 121 all-cargo carriers over the next 20 years will be approximately $107,000,000.

Part 125 All-Cargo Commercial Operator Costs

Part 125 all-cargo operators compliance costs and methodology are the same as those used to develop the cost estimates for part 121 all-cargo operators. For the 25 part 125 airplanes requiring TCAS II (or equivalent) as a result of this rule, the total estimated cost is approximately $10 million with a present value of approximately $7 million. For the 27 part 125 airplanes requiring TCAS I (or equivalent) as a result of this rule, the total estimated cost is $5 million with a present value cost approximately equal to $4 million.

It is anticipated that no additional newly manufactured airplanes will be produced for part 125 commercial operators in the 20-year study period. Therefore, no additional compliance cost for newly manufactured airplanes is anticipated for part 125 operations.

The total non-discounted compliance costs of collision avoidance system requirements for the part 125 operators are estimated to be approximately $15,000,000. The corresponding present value costs are estimated to be approximately $11,000,000.

Total Incremental Costs of the Final Rule

The total non-discounted estimated compliance costs of collision avoidance system installations on part 121 all-

cargo airplanes and part 125 all-cargo commercial operators, over the next 20 years, are estimated to be approximately $172,000,000. The corresponding present value costs are estimated to be approximately $118,000,000.

Benefits and Costs Comparison

The installation and use of TCAS for cargo airplanes is projected to reduce the probability of a cargo airplane MAC by 94% and a cargo/passenger MAC by 17%. To obtain this benefit will cost operators slightly under $118 million in present value terms over 20 years.

A 20 percent chance of a midair collision involving a cargo airplane can result in accident values from under $10 million to hundreds of millions of dollars. In the least costly case, a cargo airplane could have a midair collision with a general aviation airplane with no collateral damage. If a midair collision occurs over Los Angeles, San Diego, and other metropolitan areas, significant collateral damage can easily exceed hundreds of millions of dollars. MITRE estimated slightly more than 50 percent of all midair collisions are expected to occur over the suburbs or cities. With no collateral damage a collision with a large passenger airplane can result in costs well more than $300 million. The worst MAC occurred in 1996 with 349 fatalities. Preventing such an accident is worth over a billion dollars.

The benefits of the final rule of the proposed rule equal approximately $10,000,000. This benefit estimate is based upon avoiding a statistical 0.5 air cargo airplane midair collision with another airplane. If the expected number of accidents is reduced to 0.1 avoided midair collisions, then the estimated benefits decline to $1.1 million. Even though expected benefits are expressed in fractions of a preventable accident, a midair collision involves *two* airplanes with *no* survivors. If an accident does occur the benefits can easily exceed the cost of this rule.

Despite the estimated dollar benefits being less than the estimated costs, the FAA believes the qualitative benefits justify the costs. The facts are that collision avoidance devices have prevented MACs and that midair collisions with cargo airplanes have occurred. This final rule will help to reduce the risk of MACs and NMACs. This risk includes six NMACs in 2001, one NMAC of less than 100 feet in 1999 and now two MACs involving cargo and passenger airplanes. Given these circumstances it is not surprising there is substantial favorable public interest in this rule. This final rule responds to a Congressional mandate, responds to the petition for rulemaking from the Independent Pilots Association, and responds to NTSB safety recommendations. Hundreds of professional airline pilots who commented on the NPRM requested that this rule be implemented as soon as possible. Much of the air cargo fleet is already in compliance with the rule by voluntary action by the carriers and most of the remaining air cargo fleet is scheduled to be in compliance by December 31, 2004.

Therefore, the FAA believes that the benefits of this proposed rulemaking justify the projected costs.

Final Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes ''* * * as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a ''significant economic impact on a substantial number of small entities.'' If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA determined that this proposal results in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to ensure that the agency has considered all reasonable regulatory alternatives that will minimize the rule's economic burdens for affected small entities, while achieving its safety objectives.

Reasons for the Rule

The Traffic Alert and Collision Avoidance System (TCAS) was developed to minimize the possibility of a midair collision by providing an on-board safety back-up system that operates independently of the air traffic control (ATC) system. Beginning December 30, 1990, in the United States, a TCAS II system was required in certain part 121, 125 and 129 airplanes with more than 30 passenger seats. After December 31, 1995, a TCAS I system was required in all part 121 airplanes with 10 to 30 passenger seats. Cargo airplanes were not covered.

This rule is being promulgated because the FAA believes that the risk of midair collisions and potential collateral damage after a collision involving a cargo airplane is too high and that this rule, if implemented, will reduce this risk. In addition, the 106th Congress enacted Pub. L. 106–18 that directs the FAA Administrator to require, in part, that certain cargo airplanes be equipped with collision avoidance technology by December 31, 2002. The law provides for an extension of up to 2 years.

Significant Issues Raised by the Public Comments in Response to the IRFA

There were no public comments that directly addressed the IRFA. However, a comment was made by a small entity. This comments is reproduced below.

USA Jet Airlines, said, in part, ''Further, it is our position that a rash of mechanical and software technologies are becoming foisted upon aircraft without regard to fleet size, aircraft age or the existence of satisfactory equipment already on the aircraft. For example, in the next 3 years alone, a DC–9 and Falcon operator will, under proposed rules/regulations and existing rules/regulations pay $250,000 per aircraft for TCAS II, $125,000 per aircraft for the Terrain Awareness Warning System (TAWS) and a significant sum for the Domestic RVSM system being discussed by the FAA. We have not seen any indication of a need for these systems in the all-cargo industry.

While certainly any of these proposals have merit in that they each seek a positive goal, the cost of the implementation of all systems, precludes their very implementation for many carriers.''

Several other individual respondents also expressed a concern about the cost of the proposed regulation. Some small entities expressed a desire for more time to implement the final rule. One of these small entities requested at least a five-year compliance period. Another commenter said this rule will put small firms out of business.

The FAA considers that these comment are reasonable for small firms. However, because the final rule is a Congressional Mandate, the FAA has little flexibility in changing the final rule. However, the FAA did reduce the TCAS requirement from TCAS II to TCAS I for piston-powered airplanes because the FAA does not believe that piston-powered airplanes have the

necessary performance to respond to RAs. In addition, the FAA eliminated the requirement, in the NPRM, for TCAS I in turbine-powered airplanes of less than 33,000 pounds MCTOW. The FAA also set the rule's compliance date at the latest date allowed by the Congressional Mandate.

Number and Types of Small Entities Impacted

Under the RFA, the FAA must determine whether or not a final rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. The Small Business Administration (SBA) size standards are shown on their Web site *(http://www.sba.gov)* and are based on the North American Industry Classification (NAICS).

Entities potentially affected by the final rule include: scheduled freight air transportation (NAICS Subsector 481112) and nonscheduled chartered air transportation (NAICS Subsector 481212). The FAA used a guideline of 1,500 employees or less per firm as the criteria for the determination of a small business. This corresponds with the SBA's definition of a small business in these areas. It should be noted that the IRE used the SIC (Standard Industrial Classification) numbers to determine the size of a small business. However, the SIC has been replaced by the NAICS. In spite of this the size of a small business has remained the same, at 1,500 or less employees.

To determine which entities will be affected, the FAA segmented the various types of firms into four groups as follows:

1. Part 121 all-cargo air carriers operating turbine-powered airplanes with a MCTOW greater than 33,000 pounds. This definition was the same in the IRE and the FRE. There are 24 firms in Group 1.

2. Part 121 all-cargo air carriers operating turbine-powered airplanes of 33,000 pounds or less MCTOW and piston-powered airplanes regardless of weight. IRE)

As a result of the change in the rule from the NPRM, the definition of Group 2 changed to: Part 121 all-cargo air carriers operating piston-powered airplanes greater than 33,000 pounds MCTOW in the FRE.

There are 7 firms in Group 2.

3. Part 125 all-cargo commercial operators who fly turbine-powered airplanes with a MCTOW greater than 33,000 pounds. This definition was the same in the IRE and the FRE. There are 7 firms in Group 3.

4. Part 125 all-cargo commercial operators flying turbine-powered airplanes of 33,000 pounds or less MCTOW and piston-powered airplanes regardless of weight. (IRE)

As a result of the change in the rule from the NPRM, the definition of Group 4 changed to: Part 125 all-cargo air carriers operating piston-powered airplanes greater than 33,000 pounds MCTOW in the FRE.

There are 14 firms in Group 4.

For simplicity these entities will be referred to as Group 1, 2, 3, or 4 in the remainder of this study.

It should be noted that Groups 1 and 3 have the same definition in both the IRE and the FRE. However, the rule was modified between the NPRM and the Final Rule. The major change in the rule was the elimination of all airplanes with a MCTOW less than 33,000 pounds. Therefore, the definition of Groups 2 and 4 changed, as shown above. Groups 2 and 4 now contain only piston-powered airplanes with a MCTOW greater than 33,000 pounds. If the number of Group 2 and Group 4 small entities had remained the same between the IRE and the FRE the change in the rule would have eliminated thirteen Group 2 small entities and two Group 4 small entities. In practice, however, the combination of the change in the rule and other factors changed the number of small entities in each group.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The final rule does not add any specific projected reporting, record keeping, and other requirements.

Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

FAA potentially reduced the economic impact on small entities in two ways. First, the FAA eliminated the NPRM TCAS1 requirement for turbine-powered airplanes with a MCTOW less than 33,000 pounds. Second, instead of a TCAS II requirement for piston-powered airplanes with a MCTOW greater than 33,000 pounds, the FAA required the use of TCAS I. The FAA determined that piston-powered airplanes of this weight lacked the performance to respond to TCAC II RAs. TCAS I cost less than TCASII. As small entities tend to be the primary operators of these airplanes, these two FAA actions are expected to benefit small entities.

Finally, the FAA allowed the maximum amount of time for compliance that the Congressional Mandate allowed.

Cost and Affordability for Small Entities

The FAA estimated the financial impact on Group 1 small entities in two steps. First, the FAA multiplied a compliance cost of $223,000 cost per airplane by the operator's fleet size to obtain an operator estimated one-year cost of this rulemaking. Then the FAA calculated an affordability measure by dividing this cost by the operator's 2001 (parent company) revenues. As 2 percent is often less than the annual rate-of-inflation, the FAA believes that a compliance cost of 2 percent or less is affordable.

Group 1 consists of 24 firms that qualify as small entities (see Table XI–1 in the full Regulatory Evaluation). Financial data was available for all but one of these firms. Two of these firms had recently or were emerging from Chapter 11 bankruptcy and were not included in the financial analysis. Seven of the Group 1 firms incur no financial impact because they did not operate aircraft that would be required to have TCAS. The remaining 14 firms 1 had compliance costs as a percentage of revenue ranging from 0.8% to 38.2%. Eleven of these firms are negatively impacted by the rule because their compliance cost as a percentage of revenue is 2 percent or greater. Of the 11 firms with a value above 2% for the ratio the percentage ranges from 2.9 percent to 38.2 percent.

In a similar fashion, the FAA estimated the impact on Group 2 small entities in two steps. In an effort to raise the safety standard and to minimize the impact on small firms, for firms in Group 2, the FAA proposed requirements are expected to be met by an investment of $82,000. For the first step, the FAA multiplied the cost per airplane of $82,000 by the operator's fleet size to obtain the estimated one-year compliance cost of this rulemaking for each operator. This estimated operator compliance cost is then divided by the operator's 2001 (parent company) revenues. This ratio provides a measure of affordability.

Group 2 consists of a total of 7 firms (Table XI–2 in the full Regulatory Evaluation) that qualified as small businesses, based on the criteria of 1,500 employees per firm. Financial data was available for all but one of these firms. The financial data indicated that five of the six firms were adversely impacted by this final rule. The value of this ratio of cost per revenue is 2 percent or less for 1 of the 7 Group 2 firms. For the remaining Group 2 firms the value of this ratio ranged from 2.2 percent to 9.4 percent.

The FAA estimates that for the firm with no public financial data available was also adversely affected by the rule. Therefore, the FAA estimates that six of the Group 2 firms were adversely affected by the final rule.

The FAA estimated the financial impact on Group 3 entities using the same methodology as that for Group 1. Group 3 consists of 7 firms (Table XI–3 in the full Regulatory Evaluation) that qualified as small entities. Financial data was available for two of the seven Group 3 firms. Neither of the two firms had a value of this ratio of less than 2%. The two firms had ratio values ranging from 5.9 percent to 25.5 percent. In both cases the financial data indicated that the firms will be adversely affected by the final rule. Therefore, the FAA estimates that all seven firms will be adversely impacted.

The FAA estimated the financial impact on Group 4 entities using the same methodology as that used for Group 2. Group 4 consists of 14 firms (Table XI–4 in the full Regulatory Evaluation) that qualified as small entities. Financial data was available for four of these fourteen 4 firms. One of the four firms had a value of this ratio of less than 2%. The remaining three firms had ratio values ranging from 10.9 percent to 32.8 percent. The FAA estimates that 13 of the 14 Group 4 firms will be adversely affected by the final rule.

Of the 33 firms considered to be small, and for which information was available, over 36 percent are estimated to have costs less than 2 percent of annual revenue. For these firms the FAA believes compliance is affordable. For the remaining 64 percent of the firms the FAA estimates that there will be a significant, negative economic impact.

Competitive Analysis

Nearly all of the firms considered to be small entities and with an affordability measure greater than 2 percent appear to operate in markets with little or no competition. These markets require very specialized service such as remote air delivery service. Of the 31 part 121 only two were headquartered in the same city and most were located in remote locations. All of the part 125 operators, by regulation, provide non-competitive services. Part 125 operators are restricted from offering for-hire services to the public, such as advertising or marketing. To provide for-hire services, these operators must, in effect, have the customer find them. Thus in terms of competition, this rulemaking is expected to have a minimal competitive impact.

Disproportionality Analysis

Relative to larger air cargo operators, smaller air cargo operators are likely to be disproportionately impacted by this rulemaking. Large cargo carriers' cost is a smaller percentage of their annual revenue, than those of the smaller cargo carriers.

Business Closure Analysis

Seven firms have an extremely high compliance cost per annual revenue ratios (compliance cost greater than 10% of annual revenue). Some or even many of these firms could potentially face a business closure due to this final rulemaking. The FAA does not have sufficient information to provide a more refined estimate of the potential business closures.

Analysis of Alternatives

The FAA acknowledges that the rule is likely to have a significant economic impact on a substantial number of small entities. For the final rule the FAA changed the NPRM requirements in way that may benefit small entities. The agency considered various four alternatives for the final rule. These alternatives are:

1. Issue the rule as proposed in the NPRM.
2. Exclude small entities.
3. Extend compliance deadline for small entities.
4. Establish lesser technical requirements for small entities.

Based upon safety considerations the FAA concludes that the option to exclude small entities from all the requirements of the final rule is not justified.

The FAA considered options that will lengthen the compliance period for small operators. The FAA believes that the compliance requirement will place only a modest burden on small entities. Small entities will have 2 years from the effective date of the rule to complete installation work. Further time extensions only provide modest cost savings and leave the system safety at risk. In addition, the Congressional Mandate does not provide for a time extension beyond December 31, 2004.

The FAA considered establishing lesser technical requirements for small entities. However, the FAA believes that this will result in a lower level of safety than will the implementation of the final rule. The FAA believes that the greatest safety benefits will come from a common collision avoidance system for all operators who fly in the same airspace under the same operating environment.

In contrast to the NPRM, the FAA eliminated the CAS requirement for the owners of turbine-powered airplanes weighing less than 33,000 MCTOW. Operators of these airplanes tend to be small entities.

The FAA considered alternatives that would lessen the economic burden to small entities and achieve the needed safety objectives. To that end the FAA removed the CAS requirement for turbine-powered airplanes weighing less than 33,000 MCTOW and the required only TCASI for piston-powered airplanes. Given the real safety concerns and the Congressional mandate, the FAA worked hard to provide additional flexibility to small entities and provide the safe operating environment expected.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential affect of this final rule and has determined it uses international standards as the basis for U.S. standards. Thus this final rule is in accord with the Trade Agreement Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the

Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year.

Executive Order 13132, Federalism

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

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 4901, 44903–44904, 44912, 46105.

■ 2. In § 121.356, revise the section heading and add paragraph (d) to read as follows, effective on May 1, 2003:

§ 121.356 Collision avoidance system.

* * * * *

(d) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no person may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 3. Revise § 121.356 to read as follows, effective January 1, 2005:

§ 121.356 Collision avoidance system.

Effective January 1, 2005, any airplane you operate under this part must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate any—	Then you must operate that airplane with—
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units: (i) TCAS II that meets TSO C–119b (version 7.0), or takeoff weight a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Passenger or combination cargo/passenger (combi) airplane that has a passenger seat configuration of 10–30 seats.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to has a TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.
(c) Piston-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to maximum TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 4. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 5. In § 125.224, revise the section heading and add paragraph (c) to read as follows, effective on May 1, 2003:

§ 125.224 Collision avoidance system.

* * * * *

(c) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no person may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 6. Revise § 125.224 to read as follows, effective January 1, 2005:

§ 125.224 Collision avoidance system.

Effective January 1, 2005, any airplane you operate under this part 125 must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate any . . .	Then you must operate that airplane with:
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units: (i) TCAS II that meets TSO C–119b (version 7.0), or a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Piston-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to TSO C–118, or a later version, or (1)(3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

■ 8. In § 129.18, revise the section heading and add paragraph (c) to read as follows, effective on May 1, 2003:

§ 129.18 Collision avoidance system.

* * * * *

(c) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no foreign air carrier may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 9. Revise § 129.18 to read as follows, effective January 1, 2005:

Effective January 1, 2005, any airplane you, as a foreign air carrier, operate under part 129 must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate in the United States any . . .	Then you must operate that airplane with:
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the followign approved units; (i) TCAS II that meets TSO C–119b (version 7.0), or takeoff weight a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Turbine-powered airplane with a passenger-seat configuration, excluding any pilot seat, or 10–30 seats.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to excluding any TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

Issued in Washington, DC, on March 24, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–7653 Filed 3–31–03; 8:45 am]

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Federal Register

Tuesday,
April 1, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 202
Revisions to FHA Credit Watch Termination Initiative; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR–4625–P–01]

RIN 2502–AH60

Revisions to FHA Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several amendments to the Federal Housing Administration (FHA) Credit Watch Termination Initiative. The proposed rule provides for a fully computerized Credit Watch status notification process through use of the FHA Neighborhood Watch Early Warning System. A mortgagee will be considered to be on Credit Watch status if, at any time, it has a default and claim rate of higher than 150 percent of the normal rate, and its origination approval agreement has not been terminated. The proposed rule would also prohibit a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. In addition, the proposed rule would establish that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. The proposed rule would also codify the definition of ''underserved area'' that is currently used under the Credit Watch Termination Initiative. Finally, the proposed rule would provide that, for purposes of Credit Watch Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance.

DATES: *Comment Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, Washington, DC 20410; telephone (202) 708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The FHA Credit Watch Termination Initiative

Homeownership rates in the United States have reached a record level, and the efficient management of the FHA mortgage insurance fund remains a cornerstone of HUD's strategy to further expand housing opportunities. By originating and underwriting insured single family mortgages in accordance with program guidelines, FHA-approved mortgagees are valuable participants in achieving greater access to the housing credit market, particularly for individuals and in geographic areas that have traditionally been under-served.

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an origination approval agreement (the Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. Some mortgagees, however, have demonstrated high default and claim rates on their FHA-insured portfolios that, although not signifying violations of FHA requirements, are nonetheless unacceptable. As a result, HUD developed the Credit Watch Termination Initiative to identify mortgagees with unsatisfactory performance levels and take ameliorative action at an early stage. HUD's regulations for the Credit Watch Termination Initiative are found at 24 CFR 202.3.

Under the FHA Credit Watch Termination Initiative, FHA systematically reviews mortgagees' early default and claim rates, that is, defaults and claims on mortgagees' loans during the initial 24 months following endorsement. Mortgagees with excessive default and claim rates are considered to be on Credit Watch Status and, in cases of more severe performance deficiencies, HUD may terminate the mortgagee's loan origination approval authority. Credit Watch Status constitutes a warning to a mortgagee that its default and claim rates are in excess of permissible levels, and that failure to achieve improvement may lead to the termination of its Agreement. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board for violations of FHA requirements under 24 CFR part 25.

In a May 17, 1999, **Federal Register** notice (64 FR 26769) HUD advised that it would publish a list of mortgagees that have had their Agreements terminated. HUD has periodically published such notices since May 1999.

II. This Proposed Rule

This proposed rule would make several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. The proposed changes would strengthen HUD's capacity to safeguard the FHA mortgage insurance fund. This section of the preamble describes the most significant amendments that would be made by the proposed rule.

A. Electronic Notification of Credit Watch Status

Consistent with the goals of the Administration regarding the increased use of technology in government, the proposed rule would allow for electronic Credit Watch monitoring and notification. Specifically, the proposed rule provides that HUD will, on an ongoing basis, review the FHA mortgage claim and default rate of each mortgagee in the geographic region served by a HUD field office. HUD will use its electronic Neighborhood Watch Early Warning System for this purpose. The Neighborhood Watch Early Warning System is available to mortgagees via the FHA Connection at *https://entp.hud.gov/clas/index.html*. This proposed regulatory change would codify the policy first announced in FHA Mortgagee Letter 2001–23, issued on October 21, 2001.[1] This Mortgagee Letter provides instructions for using the Neighborhood Watch Early Warning System for purposes of monitoring performance under the Credit Watch Termination Initiative. A copy of HUD

[1] The availability of the Neighborhood Watch Early Warning System was first announced in Mortgagee Letter 2000–20, issued on June 6, 2000. Mortagagee Letter 2002–15, issued on July 17, 2002, announces the list of enhancements that have been made to the Neighborhood Watch Early Warning System since issuance of Mortgagee Letter 2000–20. Copies of both these Mortgagee Letters may be obtained via the Internet at *http://www.hudclips.org*.

Mortgagee Letter 2001–23 may be obtained through HUD's Client Information and Policy Systems (HUDCLIPS) Internet Home page at *http://www.hudclips.org*.

HUD will no longer provide mortgagees with written notification of placement on Credit Watch Status. Rather, each mortgagee will be responsible for using the Neighborhood Watch Early Warning System to monitor its performance. A mortgagee will be considered to be on Credit Watch Status if, at any time, it has a rate of defaults and claims on insured mortgages originated, underwritten or both in the geographic area served by a HUD field office which exceeds 150 percent of the normal rate, and its Agreement has not been terminated by HUD. Further, the Neighborhood Watch Early Warning System, which is updated monthly, will allow the ongoing tracking of mortgagee performance, allowing for the elimination of the current six-month tracking period for evaluating mortgagees placed on Credit Watch Status.

B. Default and Claim Rates for Placement on Credit Watch Status

Under the current regulation, a mortgagee may be placed on Credit Watch Status if it has a rate of defaults and claims on insured mortgages which exceeds ''150 percent but not 200 percent of the normal rate.'' The regulation, therefore, establishes a ''cap'' on the default and claim rates for placing a mortgagee on Credit Watch Status. The existing regulation also authorizes HUD to terminate a mortgagee's Agreement if the mortgagee's default and claim rate exceeds 200 percent of the normal rate.

In the past, HUD has used its administrative discretion to focus its resources on those mortgagees with default and claim rates higher than the 200 percent threshold. This has had the potential to create a gap in HUD's Credit Watch monitoring and enforcement efforts, since mortgagees with default and claim rates falling between 200 percent of the normal rate and the higher threshold being used for terminations would neither be placed on Credit Watch Status nor have their Agreements terminated. HUD addressed this potential concern by issuing a series of regulatory waivers of the Credit Watch cap to authorize placement of such mortgagees on Credit Watch Status. This proposed rule would eliminate the need for these regulatory waivers by removing the cap, and providing that a mortgagee will be considered to be on Credit Watch Status if, at any time, it has a rate of defaults and claims on insured mortgages that exceeds 150 percent of the normal rate and its Agreement has not been terminated.

The proposed change would not restrict HUD's ability to terminate a mortgagee whose claim and default rate exceeds 200 percent of the normal rate, but merely provides that such mortgagees will be considered to be on Credit Watch Status unless HUD determines that termination may be appropriate.

C. Limitation on the Establishment of New Branches

In reviewing the Credit Watch Termination process, HUD learned that some mortgagees were establishing new branches for the origination of FHA-insured mortgages subsequent to receiving proposed termination notices for existing branches. The mortgagees would establish the new branches to replace the authority which was lost, or which might be lost, as a result of the proposed termination of the existing branches. The result was that these mortgagees were able to evade the intended effects of the Credit Watch Termination Initiative. HUD's interest is in the mortgagee determining the reasons for its high default and claim rate in a lending area and correcting the underlying causes that led to the termination before the mortgagee is allowed to establish a new branch for the origination of FHA-insured mortgages.

In order for FHA to effectively address this evasion of the intended effect of Credit Watch Termination, this proposed rule would prohibit a mortgagee that receives a notice of proposed termination of its Agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination notice. Upon the effective date of this regulation at the final rule stage, a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location(s) cited in the proposed termination notice until either: (1) The proposed termination notice is rescinded; or (2) the Agreement for the affected branch or branches has been terminated for at least six months and the Secretary has determined that the underlying causes for termination have been remedied.

D. Inclusion of Underwriting Mortgagees

Under the current Credit Watch Termination regulation, HUD evaluates the performance of a mortgagee based solely on the loans it originates. HUD's Credit Watch Termination evaluation, therefore, excludes underwriting which is an important part of the mortgage loan process. While the mortgagee that originates a loan may also be the mortgagee that underwrites the loan, often there are two different entities involved. Specifically, an FHA approved loan correspondent only originates loans and does not underwrite. Rather, the loan correspondent has ''sponsor mortgagees'' that perform the underwriting function.

HUD's emphasis on accountability extends beyond the origination of loans to include the mortgagee that underwrites the loan. For example, HUD's regulations provide for the termination of a mortgagee's ability to underwrite FHA loans when the Agreement is terminated pursuant to the Credit Watch Termination Initiative (*see* 24 CFR 203.3(d)(2)(iv)). HUD has determined that to minimize the risk associated with the FHA single family mortgage insurance programs, HUD should also periodically evaluate the performance of underwriting mortgagees. Accordingly, this proposed rule would include underwriting mortgagees within the scope of the Credit Watch Termination Initiative. The proposed amendment would emphasize HUD's authority to terminate the ability of a mortgagee to originate or underwrite FHA-insured single family mortgages where the mortgagee has demonstrated an unacceptably high default and claim rate. HUD will analyze data for mortgagees that underwrite their own loans, and for mortgagees that underwrite loans for their loan correspondents as well as for mortgagees that underwrite both their own loans and loans for their loan correspondents.

E. Mortgage Origination Date

Under the current regulations for the Credit Watch Termination Initiative, a mortgage is considered to be originated in the same federal fiscal year in which HUD endorses it for FHA mortgage insurance. Although HUD requires that the mortgagee submit a mortgage for endorsement within 60 days after closing (*see* § 203.255(b)), there may be delays in the submission of the endorsement packages. Consequently, the endorsement dates for loans originated during the same period can vary greatly. Given these discrepancies in the timing of endorsement, linking the date of origination to the endorsement date does not allow for the most accurate comparison of loan performance.

This proposed rule would provide that, for purposes of the Credit Watch

Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance. Unlike the date of endorsement, the beginning amortization date is not dependent on the filing of timely paperwork with HUD. Further, Credit Watch analysis is based on default and claim rates. The due date for mortgage payments is established pursuant to the closing date, and mortgage defaults are reported based on these payment due dates. Accordingly, HUD believes that focusing on the amortization date will provide for a more uniform starting date for Credit Watch evaluations and increase the effectiveness of the Credit Watch Termination Initiative.

F. Definition of Underserved Area

HUD's regulation provides that before notification of proposed termination is sent to a mortgagee, the Secretary will review the Census tract area concentrations of the default and claims. This provision of the existing regulations would not be modified by this proposed rule. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, the Secretary may determine not to terminate the origination approval agreement. HUD is aware, however, that predatory lending abuses may occur in underserved areas, and that the excessive rates may be the result of predatory lending. The Secretary will consider this factor, where appropriate, in making a determination.

HUD has announced in Mortgagee Letter 99–15 that, for purposes of the Credit Watch Termination Initiative, the term ''underserved area'' will have the same meaning as that provided in HUD's regulations for the Government Sponsored Enterprises at 24 CFR part 81. Specifically, § 81.2 of those regulations defines the term ''underserved area'', in part, to mean:

> [A] Census tract, a federal or state American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any federal or state American Indian reservation or tribal or individual trust land, having:
>
> (i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or
>
> (ii) A median income at or below 90 percent of median income of the metropolitan area.

This proposed rule would codify the interpretation of ''underserved area'' provided in the Mortgagee Letter. Specifically, the proposed rule would amend § 202.3(c)(2) to specify that the term ''underserved area'' will have the same meaning as that provided in 24 CFR 81.2.

G. Informal Conference Prior to Termination

The regulations provide that prior to termination the mortgagee may request an informal conference with HUD. However, the regulations do not currently specify the timeframes for submission of such a request, nor for the holding of the informal conference. This proposed rule would specify that HUD must receive the written request for the informal conference no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice.

H. Reinstatement of Terminated Origination Approval Agreements

The proposed rule would also add a new § 202.3(e) describing the procedures a terminated mortgagee must follow to have its origination approval agreement reinstated. A mortgagee whose origination approval agreement has been terminated may apply for reinstatement if the origination approval agreement has been terminated for the affected branch or branches for at least six months and the mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

The mortgagee's application for reinstatement must be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office. The application must also contain a corrective action plan addressing each of the issues identified in the CPA analysis and include evidence demonstrating that the mortgagee has implemented the corrective action plan. The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

III. Small Business Concerns Related to Credit Watch Termination Initiative

With respect to termination of the mortgagee's Agreement, or taking other appropriate enforcement action against a mortgagee, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small business concerns at the time the enforcement action is undertaken. The language is as follows:

> **Your Comments Are Important**
>
> The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], you will find the necessary comment forms at *http://www.sba.gov.ombudsman* or call 1–888–REG–FAIR (1–888–734–3247).

In accordance with its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

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 proposed 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 office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

This proposed rule would make several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. First, consistent with the goals of the Administration regarding the increased use of technology in government, the proposed rule would allow for a fully computerized Credit Watch notification process through use of the FHA Neighborhood Watch Early Warning System. This proposed change would provide for a streamlined and more effective method of monitoring mortgagee performance and for notifying poor performing mortgagees that are in danger of having their Agreements terminated by HUD. The change would not impose an undue burden on small entities, since it merely codifies existing HUD policy previously announced through a Mortgagee Letter. Further, the majority of mortgagees (small and large) participating in the FHA mortgage insurance programs currently have access to the FHA Internet Connection that is used to provide such notification.

The proposed rule would also remove the regulatory cap on the Credit Watch default and claim rates, and providing that a mortgagee will be considered to be on Credit Watch Status if it has a default and claim rate on insured mortgages that exceeds 150 percent of the normal rate and its Agreement has not been terminated. This revision would not impose a significant economic impact on small entities, since the entities that would be affected by this change are poor performing mortgagees that are already subject to termination of their Agreements.

The proposed rule also would prohibit a mortgagee that has received a notice of proposed termination of its Agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The mortgagees to which this change would be applicable are those that already have been notified by HUD that their default and claim rates exceed an acceptable standard in specified geographic areas and they are at risk of having their FHA mortgage origination approvals terminated. The appropriate logical response to a notice of proposed termination is not to have this same mortgagee open a new branch in the same lending area before risks have been mitigated and problems corrected. The intent of this rulemaking is to close a loophole used by mortgagees to evade HUD's existing procedure for reviewing losses to the insurance funds.

The proposed rule would also establish that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. This amendment will ensure that the performance of all mortgagees involved in FHA-insured mortgage transactions is evaluated. To the extent that the proposed change would have an economic impact on small underwriting mortgagees who are presently not covered by Credit Watch Termination, it will be as a result of actions taken by the mortgagees themselves—that is, failure to undertake the sound business practices necessary to maintain default and claim rates at an acceptable level.

The proposed rule would also provide that, for purposes of the Credit Watch Termination evaluation, the date of mortgage origination would be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance as provided in the current regulation. This proposed change would not impose any economic burden on small mortgagees. Rather, the change would improve the accuracy of Credit Watch Termination evaluations by conforming HUD's definition of the mortgage origination date to the beginning amortization date used to report defaults. Finally, the proposed rule would codify existing definition of the term ''underserved area'' for purposes of Credit Watch Termination determinations. This proposed amendment would merely codify existing policy and would, therefore, not impose any new economic burden on mortgagees.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule would 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. Accordingly, under 24 CFR 50.19(c), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

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 proposed rule would 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 proposed rule would 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

The Catalog of Federal Domestic Assistance Program number applicable to 24 CFR part 202 is 14.20.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Amend § 202.3 by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

* * * * *

(c) * * *

(2) *Termination of the origination approval agreement.* (i) *Scope and frequency of review.* The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office. HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Mortgagee Letter. For this purpose, and for all purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same federal fiscal year in which its amortization commences. The Secretary may also review the insured mortgage performance of a mortgagee's branch offices individually and may terminate the authority of the branch or the authority of the mortgagee's overall operation.

(ii) *Credit Watch Status.* Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on insured mortgages originated, underwritten, or both, in an area which exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated. A poor performing mortgagee on Credit Watch Status is in danger of having its origination approval agreement terminated by HUD.

(iii) *Effect of default and claim rate determination.* (A) The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated, underwritten, or both, in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages. The termination notice may be given without prior action by the Mortgagee Review Board.

(B) Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, as defined in 24 CFR 81.2, the Secretary may determine not to terminate the origination approval agreement.

(C) Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice.

(D) Upon receipt of a proposed termination notice, the mortgagee shall not establish a new branch or new branches for the origination of FHA-insured mortgages in the area or areas that are covered by the proposed termination notice. As of [effective date of final rule to be inserted at final rule stage] a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either:

(1) The proposed termination notice is rescinded; or

(2) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with paragraph (e) of this section.

(iv) *Rights and obligations in the event of termination.* If a mortgagee's origination approval agreement is terminated, it may not originate or underwrite single family insured mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(iv)(A). Termination of the origination approval agreement shall not affect:

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated by the mortgagee shall be insured unless a new origination approval agreement is accepted by the Secretary;

(B) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations, including servicing, associated with insured mortgages;

(C) A mortgagee's right to apply for reinstatement of the origination approval agreement in accordance with paragraph (e) of this section; or

(D) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

* * * * *

(e) *Reinstatement of terminated origination approval agreement.* (1) *Reinstatement.* A mortgagee whose origination approval agreement has been terminated under paragraph (c) of this section may apply for reinstatement if:

(i) The origination approval agreement for the affected branch or branches has been terminated for at least six months; and

(ii) The mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

(2) *Application for reinstatement.* The mortgagee's application for reinstatement must:

(i) Be in a format prescribed by the Secretary and signed by the mortgagee;

(ii) Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and

(iii) Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in paragraph (e)(2)(ii) of this section, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

(3) *HUD action on reinstatement application.* The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

Dated: March 2, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–7704 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
April 1, 2003

Part V

Department of Education

Office of Safe and Drug-Free Schools—Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.215F]

Office of Safe and Drug-Free Schools—Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Carol M. White Physical Education Program provides grants to initiate, expand, or improve physical education programs, including after-school programs, for students in one or more grades from kindergarten through 12th grade in order to help students make progress toward meeting State standards for physical education.

For FY 2003 the competition for new awards focuses on a statutory requirement we describe in the Statutory Requirements section of this application notice.

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations (CBOs), including faith-based organizations provided that they meet applicable statutory and regulatory requirements.

Applications Available: April 1, 2003.

Deadline for Transmittal of Applications: May 12, 2003.

Deadline for Intergovernmental Review: July 12, 2003.

Estimated Available Funds: $59.5 million.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 198.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Statutory Requirements: We will award grants to LEAs and CBOs to pay the Federal share of the costs of initiating, expanding, or improving physical education programs (including after-school programs) for kindergarten through 12th grade students by—

(1) Providing equipment and support to enable students to participate actively in physical education activities, and

(2) Providing funds for staff and teacher training and education,

in order to make progress toward meeting State standards for physical education.

Administrative Costs

Not more than 5 percent of the grant funds made available to an LEA or CBO in any fiscal year may be used for administrative costs.

Federal Share

The Federal share for grants under this program may not exceed 90 percent of the total cost of a project.

Prohibition Against Supplanting

Grant funds made available under this program shall be used to supplement and not supplant other Federal, State, or local funds available for physical education activities.

Participation of Home-Schooled or Private School Students

An application for funds under this program may provide for the participation of students enrolled in private, nonprofit elementary or secondary schools and their parents and teachers, or home-schooled students and their parents and teachers.

Equitable Distribution

We will ensure, to the extent practicable, an equitable distribution of awards among applicants serving urban and rural areas.

Special Rule

Extracurricular activities, such as team sports and Reserve Officers' Training Corps (ROTC) program activities, shall not be considered as part of the curriculum of a physical education program.

SUPPLEMENTARY INFORMATION:

Novice Applicants

We encourage the participation of novice applicants, including faith-based organizations, in the Carol M. White Physical Education Program. Therefore, we will reserve up to 25 percent of available funds for grants to novice entities submitting high-quality applications. Applications submitted by eligible novice entities will be read, scored, ranked, and considered for funding separately from applications submitted by non-novice eligible entities.

Cap on Awards for Novice Applicants

The maximum award for which a novice applicant may apply is $150,000. Applications submitted for consideration under the novice provisions that request funding in excess of $150,000 will be read in the pool of applications submitted by non-novice entities.

Form Applications

An application under this program should address the specific needs of the population that the applicant proposes to serve, and activities should be designed to meet those needs. As a result, we strongly discourage applicants from using ''form'' applications or proposals that do not address the identified needs of their student population or that fail to provide a clear plan for helping students meet State standards for physical education.

Additional Awards

Contingent upon the availability of funds, we may make additional awards in FY 2004 from the rank-ordered list of unfunded applications from this competition.

Participation of Faith-Based Organizations

Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

Program Elements

A physical education program funded by the Carol M. White Physical Education Program may provide for one or more of the following:

(1) Fitness education and assessment to help students understand, improve, or maintain their physical well-being.

(2) Instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, or social or emotional development of every student.

(3) Development of, and instruction in, cognitive concepts about motor skill and physical fitness that support a lifelong healthy lifestyle.

(4) Opportunities to develop positive social and cooperative skills through physical activity participation.

(5) Instruction in healthy eating habits and good nutrition.

(6) Opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Definitions: For the purpose of this competition, terms used in this notice have the following meanings:

Local Educational Agency

(A) *General.* In general, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as

an administrative agency for its public elementary or secondary schools.

(B) *Administrative control and direction.* The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) *BIA schools.* The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(D) *Educational service agencies.* The term includes educational service agencies and consortia of those agencies.

(E) *State educational agency.* The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Community-based organization means a public or private nonprofit organization of demonstrated effectiveness that: (a) is representative of a community or significant segments of a community; and (b) provides educational or related services to individuals in the community.

Nonprofit as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Novice Applicant means—

(1) Any applicant for a grant from ED that—

(i) Has never received a grant or subgrant under the Carol M. White Physical Education program;

(ii) Has never been a member of a group application, submitted in accordance with §§ 75.127–75.129 of EDGAR, that received a grant under the Carol M. White Physical Education program; and

(iii) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this competition.

(2) In the case of a group application submitted in accordance with §§ 75.127–129, a group that includes only parties that meet the requirements of paragraph (1) of this definition.

Note: A grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for project. (25 points)

In determining the need for the proposed project, the following factor is considered:

(a) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(Note: The specific gaps or weaknesses we will be looking for are gaps and weaknesses in meeting State standards for physical education.)

(2) Significance. (25 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement;

(b) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(Note: Under this criterion we will be looking at the applicant's approach to an integrated set of planned, sequential strategies and activities designed to help students understand, improve, or maintain their physical well-being and promote professional development for teachers of physical education.)

(3) *Quality of the Project Design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the proposed activities constitute a coherent, sustained program of training in the field;

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;

(c) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(Note: Under this criterion we will be looking at the quality of the applicant's plan to help students make progress toward meeting State standards for physical education, including the linkage between proposed activities and State standards.)

(4) *Quality of the Project Evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation include the use of 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; and

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

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, you may call 1–877–576–7734. You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs/html.* 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 84.215F.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as

discretionary grant competitions. The Carol M. White Physical Education Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED Form 424), Budget Information—Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-Application system.
2. Make sure that the applicant's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-Application system. (You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of ED Form 424.
5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.
6. We may request that you give us original signatures on all other forms at a later date.
7. *Closing Date Extension in the case of System Unavailability:* If you elect to participate in the e-Application pilot for the Carol M. White Physical Education Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application via e-Application, by mail, or by hand delivery. For us to grant this extension:

(1) you must be a registered user of e-Applications, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (ET), on the deadline date; or

(b) the e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m. (ET)) on the deadline date. The Department must acknowledge and confirm the period of unavailability before granting you an extension. To request this extension you must contact Ethel Jackson by e-mail at *Ethel.Jackson@ed.gov* or by telephone at (202) 205–5471 or the e-Grants help desk at (888) 336–8930.

You may access the electronic grant application for the Carol M. White Physical Education Program at: *http://e-grants.ed.gov.*

We have included additional information on the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

FOR FURTHER INFORMATION CONTACT: Ethel Jackson, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6123. Telephone: (202) 260–2812 or via Internet: *Ethel.Jackson@ed.gov.*

Individuals with disabilities may obtain this document, or an application package, in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 7261.

Dated: March 27, 2003.

Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–7970 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–01–P

Federal Register

Tuesday,
April 1, 2003

Part VI

The President

Executive Order 13293—Amendment to Executive Order 10448, Establishing the National Defense Service Medal

Executive Order 13294—Regulations Relating to Hazardous Duty Incentive Pay, Aviation Career Incentive Pay, and Submarine Duty Incentive Pay

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

Presidential Documents

Title 3—

The President

Executive Order 13293 of March 28, 2003

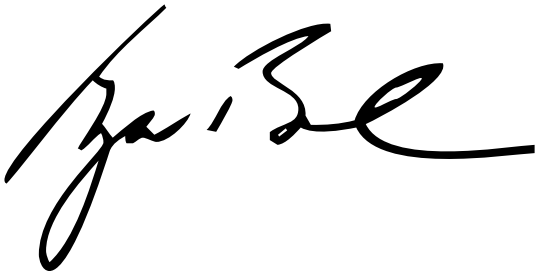
Amendment to Executive Order 10448, Establishing the National Defense Service Medal

By the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, and in order to extend eligibility for the award of the National Defense Service Medal to members in good standing in the Selected Reserve of the Armed Forces of the United States, it is hereby ordered that Executive Order 10448 of April 22, 1953, as amended, is further amended:

1. by inserting ''or service in good standing in the Selected Reserve of the Armed Forces'' after ''active military service'' each place it appears; and

2. by striking ''additional period of active duty'' and inserting in lieu thereof ''additional period.''

Nothing in this order shall be construed to impair or otherwise affect the exercise of authority granted by Executive Order 12776 of October 8, 1991.



THE WHITE HOUSE,
March 28, 2003.

[FR Doc. 03–8108
Filed 3–31–03; 11:33 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13294 of March 28, 2003

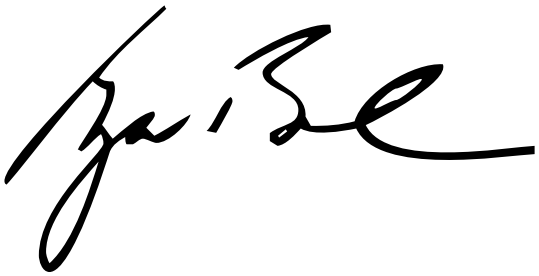
Regulations Relating to Hazardous Duty Incentive Pay, Aviation Career Incentive Pay, and Submarine Duty Incentive Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 301, 301a, and 301c of title 37, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. The Secretary of Defense, the Secretary of Commerce, the Secretary of Health and Human Services, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, with respect to members of the uniformed services under their respective jurisdictions, are hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by sections 301, 301a, and 301c of title 37, United States Code. The Secretaries shall consult each other in the exercise of such authority to ensure similar treatment for similarly situated members of the uniformed services unless the needs of their respective uniformed services require differing treatment.

Sec. 2. Executive Order 11157 of June 22, 1964, as amended, and Executive Order 11800 of August 17, 1974, as amended, are hereby revoked.

Sec. 3. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.



THE WHITE HOUSE,
March 28, 2003.

[FR Doc. 03–8109
Filed 3–31–03; 11:33 am]
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CFR PARTS AFFECTED DURING APRIL

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.

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.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. 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. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2003

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 1	May 16	June 2	June 30
April 2	April 17	May 2	May 19	June 2	July 1
April 3	April 18	May 5	May 19	June 2	July 2
April 4	April 21	May 5	May 19	June 3	July 3
April 7	April 22	May 7	May 22	June 6	July 7
April 8	April 23	May 8	May 23	June 9	July 7
April 9	April 24	May 9	May 27	June 9	July 8
April 10	April 25	May 12	May 27	June 9	July 9
April 11	April 28	May 12	May 27	June 10	July 10
April 14	April 29	May 14	May 29	June 13	July 14
April 15	April 30	May 15	May 30	June 16	July 14
April 16	May 1	May 16	June 2	June 16	July 15
April 17	May 2	May 19	June 2	June 16	July 16
April 18	May 5	May 19	June 2	June 17	July 17
April 21	May 6	May 21	June 5	June 20	July 21
April 22	May 7	May 22	June 6	June 23	July 21
April 23	May 8	May 23	June 9	June 23	July 22
April 24	May 9	May 27	June 9	June 23	July 23
April 25	May 12	May 27	June 9	June 24	July 24
April 28	May 13	May 28	June 12	June 27	July 28
April 29	May 14	May 29	June 13	June 30	July 28
April 30	May 15	May 30	June 16	June 30	July 29